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Christine Elwell

Human Rights, Labour Standards and the New Wtll:

Opportunities for a Linkage

A Canadian
perspective

Christine Elwell

Essays on Human Rights and Democratic Development



INTERNATIONAL CENTRE FOR HUMAN RIGHTS
AND DEVELOPMENT

**HUMAN RIGHTS, LABOUR STANDARDS
AND THE NEW WORLD TRADE
ORGANIZATION: OPPORTUNITIES FOR
A LINKAGE**

- A CANADIAN PERSPECTIVE -

**By
Christine Elwell**

**Essays on Human Rights
and Democratic Development**



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FOREWORD



There is no doubt that, in their daily lives, ordinary people in Bangkok, Stockholm or Johannesburg experience the consequences of the web of connections between rights, trade agreements and conditions of work. The results can be either positive or negative. It is in the self-serving fantasy world of certain kinds of lawyers, social scientists and politicians that this reality is obscured, deemed irrelevant. It has always been thus.

While all economic systems have direct connections with rights, of one kind or another, the only system that has global relevance today is some form of market economy. Whether that economy is manifested in any of its Asian forms or in its conservative or social democratic variants in the North Atlantic world, domestic political leaders are now in agreement that market forces should be the major determinants of the economic allocation of human and material resources.

The human and material consequences are immense. In recent years, the mobility of goods and services has been joined by that of capital. National governments, until recently deemed to have much more than de jure sovereignty over their populations, are increasingly seen to be marginalized in the wake of international market forces. Fiscal, monetary, employment and social justice policies are now all deeply shaped, if not totally determined, by external forces literally under the control of no one. Such is the global triumph of capitalism.

It is in this context that we must welcome Christine Ebeid's thoughtful essay on the linkage between trade, rights and labour standards. She brings together the background material and relevant arguments which are necessary in assessing the linkages and in making policy decisions about the future. Her argument is not abstract. She discusses competitiveness, NAFTA, women, sustainable development, the International Labour Organization and, importantly, the new World Trade Organization. Human Rights are at the core of her argument.

The positive and negative aspects of the relationship between market economies on the one hand, and human rights and democracy on the other, is now a subject which ought to concern all democrats. It is clear that at both the national and international levels, steps must be taken to ensure that human beings regain some control over the impersonal forces that are pushing us around. Ultimately, this is what human rights are all about. What has been much less clear is what the particular steps should be. Christine Ebeid's essay should stimulate further debate on the crucial issues facing both the human rights and the increasingly global business communities.

Edward Broadbent
President of the Centre

INTRODUCTION

The end of the Cold War, the 50th anniversary of the United Nations and Bretton Woods institutions, and the 75th anniversary of the International Labour Organization. All of these major events have provided occasions upon which to reflect on global policy mandates and initiatives for the 21st century, occasions marked by important world conferences on the environment and development, population, social development, and the empowerment of women and children. These events have also put enormous pressure on the international trade community to reexamine its role within the wider international arena.

A truly global marketplace has emerged — the product of huge technological advances in the areas of communications, transportation, and capital mobility. World policy-makers and institutions are increasingly being called upon to coordinate matters once considered the exclusive domain of the nation state. And the distinction between "foreign" and "domestic" policy has become more blurred than ever before.

A counterpart to this increased economic integration and globalization is the decline in relevance of national governments and institutions. What the world might anticipate, then, is an intensified search "for new and reinforced supranational structures. It is no coincidence, in this respect, that the new World Trade Organization (WTO) will have a mandate that is much broader (think of services and intellectual property) and in a sense much deeper (think of the integrated nature of the dispute settlement process) than in the old General Agreement on Tariffs and Trade"¹ (GATT).²

The new global marketplace has in turn produced a global labour market. It is the result of standard production technology and highly mobile capital, as well as performance comparisons on productivity, employer flexibility, wages and working conditions. With this global labour market comes the inevitable task of establishing global labour regulations to protect workers' rights, prevent predatory pricing and so-called social dumping. A host of technical questions concerning jurisdiction must also be addressed, in such instances as when a foreign service worker sustains a job-related injury or bids on a job during a local industrial dispute.

ENVIRONMENT Rio de Janeiro



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While the emergence of a global marketplace may have opened up possibilities for economic growth, the environmental constraints of the biosphere have tempered the expectations of the world community, including the WTO.

In June 1992, the United Nations Conference on Environment and Development produced the Rio Declaration on Environment and Development. The non-binding declaration recast the right to development in terms of sustainability and intergenerational equity. Principle 3 of the Declaration states: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations", while Principle 1 makes a link between human rights and sustainable development: "Human beings are the centre of concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature".¹ Indeed, environmental considerations are beginning to overrule what has previously often been perceived as a sovereign right to economic development at any ecological or human cost.

Sustainable Development and Social Justice

Economic prosperity, environmental enhancement and social justice are said to be the three pillars of sustainable development. While the trade community has begun to grapple with ecologically sound development, its role in supporting the third pillar of sustainable development — social justice — remains negligible in some areas. In industrial and developing countries alike, the gap continues to widen in the domestic distribution of income. Social inequality undermines a country's very efforts to achieve ecologically sound development. Moreover, it can be argued that it also undermines its efforts to achieve economic prosperity: "Development patterns which perpetuate today's inequities are neither sustainable nor worth sustaining. Indeed global sustainability without global justice is an elusive dream".² The framework of sustainable development, therefore, affords policy-makers a new opportunity in which to address issues of social justice.

Clearly, there is a need for a new world order based on sustainable development — that is, ecologically sustainable human and economic development. The international trade

community can no longer operate in a vacuum, untouched by environmental and social constraints. Nor can the wider international community continue to adapt to these constraints by compartmentalizing the economy, the environment, human rights and democracy into separate institutional mandates. Global mandates, and cross-institutional initiatives will, it seems, eventually become integrated. It would seem logical, therefore, that what is now generally referred to as a "social clause" — linking trade and human rights with labour standards — should be included in all trade agreements.

The Link Between Trade and Human Rights and Labour Standards

To define the linkage between trade and human rights is really to define how one set of principles affects the other.

It could be said that a linkage between trade and human rights results when a regime represses its citizens' human rights to the extent that there is a direct effect on the country's social and labour costs, and, consequently, its competitiveness, the market, investment and trade. At that point, producers for export in the country concerned must face the issue of determining which social costs they should internalize in order to protect profits and prices — such as workers' right to association and their right to bargain collectively.

It is significant to note that by promoting and complying with human rights, a country fosters the political and consumer stability necessary for economic prosperity and the fulfilment of trade commitments. Indeed, one can argue that political stability and social justice in a country are prerequisite to creating a favourable climate for investment, production and trade. The trade community is beginning to appreciate this consideration, even though it may not express the full aspirations of the human rights community.

Human rights advocates argue that expanded, deregulated trade can have a negative impact on a broad range of rights. They point to how it exacerbates the already poor working and living conditions of subsistence farmers faced with competition from large agribusiness.

If it is true that trade liberalization enhances the rights of corporations and business leaders, then the international community should take measures to guarantee basic human rights for all working men and women. It should accord them the capacity to shape the impact of economic growth and steer social change in the direction of greater democracy. Some human rights advocates concede that the trade system can have a positive impact on promoting human rights, as it has done in the calls for product labelling, and the so-called social clause to be included in the WTO agreements.

This raises questions concerning the operations and mandate of key institutions and how the trade community ought to go about selecting and integrating human rights and labour standards in its mandate. It also raises questions concerning the impact of human rights principles on trade, and how the two will communicate and resolve their inevitable conflicts. A growing practice seems to be for the two camps to communicate in economic terms, discussing externalized costs, social debt and the internalization of social costs.

Human rights advocates must be cautious, however. The market cannot be expected to bear the full weight of human rights aspirations without being given evidence of some direct impact on trade or the market, or of a serious threat to the environment.

Generally speaking, the new World Trade Organization offers greater opportunities than ever before to link human rights and labour standards. This is largely the result of the end of the Cold War, advances in communications and a growing concern for the environment in the global marketplace. While some observers predict that a trade and human rights linkage could be decades away, readers are cautioned that because events are changing so rapidly, the observations presented herein are current only as of the end of 1994.

Part I of this essay provides a short retrospective of efforts to integrate human rights and labour standards multilaterally into the GATT, as well as regionally in both the European Union (EU) and the North American Free Trade Agreement (NAFTA). Part II examines the major arguments for and against a trade-human rights and labour standards linkage in the WTO. Part III analyses the potential for a linkage in the WTO in light of the positions taken by governments, international organizations and non-governmental organizations (NGOs) on a linkage and the so-called social

clause in the WTO. Part IV critically reviews some of the suggested institutional models and the substantive rights and standards for integration into economic agreements

Part I

REVIEW OF EFFORTS TO LINK HUMAN RIGHTS AND LABOUR STANDARDS IN INTERNATIONAL AND REGIONAL ECONOMIC AGREEMENTS

1.1 The International Trade Organization (ITO)

One of the most important commitments for a linkage dates back to the creation of the present international trade system. In 1947, the UN Conference on Trade and Employment adopted Article 7 of the Charter of the ITO. The ill-fated "Havana Charter" provided that members should take national measures in the areas of fair labour standards and employment policy: "Members recognize that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that our countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. *The members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory*" (my emphasis). Though the ITO eventually died on the floor of the U.S. Congress, international commodity agreements provided for fair labour standards throughout the 1950s and 1960s.

During the Tokyo round of GATT negotiations (1973-1979), the issue of worker health in relationship to trade was championed by the International Confederation of Free Trade Unions (ICFTU), representing 99 million workers in 101 countries and territories. The U.S. and Nordic countries unsuccessfully campaigned to amend the GATT in support of this early example of a social clause. Labour Canada (now Human Resources Development Canada) supported the inclusion of labour standards in the GATT.¹ Developing

countries, however, were not prepared to put the issue on the negotiating agenda.

Perhaps the most comprehensive examination of the issue of labour standards was carried out in 1980 by the Independent Commission on International Development Issues, headed by Willy Brandt. The Brandt Commission, as it came to be known, concluded that "fair labour standards should be internationally agreed upon in order to prevent unfair competition and to facilitate trade liberalization". The Commission made the important observation that "the issue of labour standards in the south is linked to the issues of labour adjustment in the north".⁶

In 1986, during the work of the Preparatory Committee for the Uruguay Round, the U.S. Trade Representative, at the request of the Democrat-controlled U.S. Congress, formally proposed that the issue of worker rights be put on the trade agenda: "Ministers recognize that denial of worker rights can impede attainment of the objectives of the GATT and can lead to trade distortions, thereby increasing pressure for trade restrictive measures.... An exploratory GATT examination of this question, however, should include not only direct workplace standards, such as the existence of minimum wages or of reasonable conditions of health and safety, but also broad political rights such as freedom of association, and the right to organize and bargain collectively. Initially, the GATT could draw upon ILO Conventions and recommendations as appropriate".⁷ The European Parliament, Canada, Norway, New Zealand, Japan and Sweden supported the U.S. initiative,⁸ though it was widely opposed by developing countries.

1.2 Unilateral Initiatives by the United States

The U.S. Congress has constitutional jurisdiction over trade and commerce. In legislation granting authority to the executive branch of the government to distribute foreign aid or negotiate trade agreements, the Congress can specify the outcomes of that aid distribution or trade negotiation.⁹ This has been a source of conflict with Republican administrations. Congress, therefore, has made an effort to condition trade with human rights unilaterally in domestic legislation.

In the United States, the linkage between human rights and labour standards is complex and in many cases untested. Under U.S. legislation, the Generalized System of Preferences (GSP)¹⁰ grants developing countries trade preferences and access to the U.S. market on the condition that they "take steps" to accord workers the following five internationally recognized workers' rights:

1. The right to association
2. The right to organize and bargain collectively
3. Prohibition against forced labour
4. A minimum age for child labour
5. The right to acceptable working conditions with respect to minimum wages, hours of work, health and safety.

These GSP rights were based on standards recognized by the International Labour Organization (ILO). Notably absent among them, however, is freedom from discrimination in employment.

The fundamental premise of the GSP labour rights clause is that no country should gain a competitive advantage in the global economy by abusing workers' rights. This trade conditionality is enforced through an annual review system, as well as a complaints procedure which is initiated privately (usually by trade unions and human rights groups) to the U.S. Trade Representative Office.

Petitioners seeking labour rights sanctions have succeeded in removing Paraguay (under General Stroessner), and Chile (under General Pinochet) from preferential status under the GSP. These actions contributed to a transition to greater democracy in those countries, which saw them reinstated to the program in 1991. Haiti, El Salvador, Bangladesh and Syria have been placed on a "continuing review" status based on labour rights petitions.

In 1991, the AFL-CIO (American Federation of Labor and Congress of Industrial Organizations), among others, unsuccessfully sued the Bush Administration for its selective application of the law to further other foreign policy goals. In a complaint about Guatemala that same year, U.S. federal courts ruled that the introduction of a labour law reform bill by Guatemala was sufficient to constitute "taking steps" to protect labour rights, even though the bill had no chance of passage. Evidently, the "taking steps" clause of the labour rights conditionality gives the courts complete latitude in applying unilateral trade sanctions for labour rights violations.

Section 301 of the infamous Trade Act of 1988¹¹ also provides that trade measures are available against "unfair" and "unreasonable" foreign trade practices. "Unreasonable" trade practices include a persistent pattern of conduct that denies the GSP worker rights listed above. Enforcement is based on a private complaint procedure.

The Act's sanctions can vary from import restrictions to special tariffs and duties. Significantly, these sanctions can affect all aspects of a country's trade with the U.S. Careful research is under way to find the proper "test case" for Section 301 in labour rights. Malaysia and Korea are the most likely prospects for a challenge, based on their extensive history of labour rights abuses and their high level of exports of high-technology and heavy industry products to the U.S.¹² In December 1993, U.S. Trade Representative Mickey Kantor announced that he will continue to review the workers' rights practices of four developing countries. Although El Salvador, Guatemala, Oman and Thailand have made "real efforts" recently to meet international standards, Kantor said "more needs to be done."¹³

Mickey Kantor, U.S. Trade Representative and negotiator for the NAFTA.



G. ANAPRISS

But this system of standards has proven to be too easily manipulated. In 1949, Indonesia prohibited children under 15 from working. In 1970, however, when the Shah banned child labour in Iran, the carpet industry there relocated to Indonesia and South Asia. In 1987, Indonesia decided to nullify its child labour prohibition for "children forced to work for social or economic reasons". By 1991, 2.8 million Indonesian children were reportedly "bonded" to factories — in other words, mortgaged by parents to employers.¹⁴

Despite a good campaign with broad regional support to ban exports created using child labour, Kantor's announcement threatening Indonesia's GSP status did not go further.

Even with the irregular application of U.S. law to link trade with workers' rights and labour standards, the GSP has had a positive impact: "There is no denying that the mere fact that certain governments knew that 'their case' was being reviewed under the U.S. GSP has led to 'sudden, remarkable improvements in the human and labour rights situations in these countries'".¹⁵ Recent petitions have been filed by American trade unions to remove these trade benefits from Indonesia (once again), Malaysia and Thailand.¹⁶

It is significant to note that in areas not covered at present by the new WTO Agreements — including competition policy and labour standards — the U.S. maintains that it retains the right to use Section 301 in its own trade laws on GSP conditionality, as it has done in the past.

As well, Kantor stated that the U.S. is free to act unilaterally against countries such as China, which are not now members of the GATT.

1.3 The European Union

Linking respect for human rights and economic integration is now an established practice in Europe. Spain, Portugal and Greece were denied admittance to the European Community until they replaced authoritarian regimes with democracies.¹⁷ Moreover, nations wishing to obtain trade concessions or aid from the E.C. must join the Council of Europe and ratify the European Convention on Human Rights. The Convention requires the state party to report on progress made to protect human rights and comply with a complaints procedure. (Not to be confused with the European Union or the European Community, the Council of Europe is a separate body consisting of 21 member countries.)

The Council of Europe's Social Charter guarantees detailed rights and obligations respecting social and economic rights, including worker and trade union rights. Ratifying states are bound by five to seven so-called "essential rights" as well as at least five others. The Charter is enforced by the Committee of Independent Experts, as opposed to the European Court of Human Rights which only has jurisdiction respecting the European Covenant on Human Rights (civil and political rights).

The Committee of Independent Experts receives state reports on the extent to which countries are complying with the law and practice of the Charter. An inter governmental body makes recommendations to the countries for improving their compliance. The report and recommendations are sent to national organizations of employees and employers for their observations. Information gathered from these consultations and the ILO is then submitted in a final report by the Committee of Independent Experts to the Committee of Ministers (the governing body of the Council). The Committee of Ministers can rule in a two-thirds majority vote that a state has violated its obligations.

Under the Labour Agreement, therefore, the enforcement of human rights principles hinges on the members' compliance with their obligation to report human rights abuses. Also, there are no trade-related compliance measures.

When the European Community was established by the Treaty of Rome in the 1950s, it was believed that the common market would result in a "progressive coalescence of social policies". Harmonization of labour legislation was to be resorted to only where there were "specific distortions".¹⁸ Indeed most if not all European social policy is premised on the theory of avoiding distortions of competition within the EU's Single Market Act.

Erika Szyszczak, a legal scholar, concludes: "In reality, the autonomous role of social policy has never been achieved." The welfare of the worker, in its own right, and the creation of conditions for "undistorted competition" have always been a matter of tension within the [European] Community.¹⁹ Until the political legitimacy of the European Parliament is strengthened, social policy in Europe may well remain an aspect of the internal market, carried out with a sizeable social fund and an active industrial policy to support adjustment in the context of structural change.

In 1975, the Lomé Convention was signed between the European Economic Community and the ACP (African, Caribbean and Pacific states). The preamble of the third ACP-EC Convention (1985-1990) contains a reference to human rights, but falls short of establishing a follow-up procedure or mechanism. Recently, however, the European Parliament adopted a resolution asking the European Commission to propose a "social incentive clause" in the European General System of Trade Preferences in favour of developing countries.

European Social Policy after Maastricht

Three significant advances in social policy are contained in the 1992 Maastricht Treaty on European Union. First, eleven Treaty members signed an Agreement on Social Policy (the United Kingdom opted out), which was appended to the Treaty on European Union. This agreement is the so-called Social Charter, as distinct from the "Social Charter", which is a declaration of the essential elements for European social policy but without direct legal effect. Significantly, the Social Charter is legally binding as a piece of European law and is enforced by national measures and the European Court of Justice.

Secondly, the "social dialogue" between the social partners became institutionalized within the framework of the Treaty Article 4 of the Social Chapter specifically recognizes the principle of collective bargaining at the Community, European-wide level: "Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements". The European Commission is mandated to assist with consultations between the parties. An important design feature is that these collective agreements are an alternative to European-wide legislation, provided that member states effectively implement European social policy directives into national legislation.²⁰

The third major achievement at Maastricht involved the new voting arrangements specified in Article 2 of the Social Chapter.²¹ The Chapter already contained legislation on the health and safety of workers, which requires only a qualified majority vote of approximately two-thirds. The following social policy matters for European directives have since been added. They, too, now require only a qualified majority vote of approximately two-thirds by the Council of Ministers (Social Affairs/Labour): working conditions; information for and consultation of workers; equality between men and women concerning labour market opportunities and treatment at work; and the integration of people excluded from the labour market. As well, the long-awaited working-time directive to protect workers' health and safety was endorsed in 1993 by a vote of 11-0. It established a maximum 48-hour week and minimum four-week paid vacation.²²

Unanimous voting is still required, however, on the following matters: social security and the social protection of workers; protection of workers where their employment contract is terminated; representation and collective defence of the interests of workers and employers; conditions of employment for third-party nationals; and financial contributions to the Social Fund. Pay, freedom of association, the right to strike and declare lock-outs are all matters falling outside the jurisdiction of the Council.

As the social policy originally outlined in the Social Charter becomes implemented by the European Union, or now its social partners, the standards are significantly less likely to be constrained by "a lowest common denominator approach".²³ This is the result of an increase in qualified majority voting, and the regrettable decision by the government of the U.K. not to sign the new Social Chapter.

Soon after Maastricht, Britain was accused of "social dumping" when the Hoover corporation relocated from France to Scotland. To counter this loophole, the European Commission proposed a directive that multi-state firms must establish "work councils" which would have to be consulted on all relocation plans. After 13 years of negotiations,¹⁴ the EC social affairs ministers finally adopted a directive under the new procedure. Britain's decision to opt out of this directive is still binding on over 300 British continental operations. One observer remarked that: "The British opt-out may yet prove a Pyrrhic victory".¹⁵

1.4 NAFTA and the Agreement on Labour Cooperation

While NAFTA's token labour agreement drew mostly contempt from labour rights activists — who believe that the North American Agreement on Labour Cooperation (the Labour Agreement) could not "fix" the NAFTA — it has nevertheless been recognized as "the first agreement to legitimize international labour regulation."¹⁶

Mexico resisted NAFTA side agreements in part because higher labour and environmental costs in Mexico could displace investment and jobs to Guatemala, the Caribbean and Asia. When Mexico finally agreed to negotiate these matters with the Clinton Administration, Mexico's President Salinas publicly stated three conditions: 1) the issues in the NAFTA could not be re-opened; 2) the side-deals must not constitute a form of hidden protectionism; and 3) the agreements must not derogate from national sovereignty.¹⁷

This last proviso set the stage for the unique design of the Labour Agreement. Instead of the parties giving jurisdiction to a trilateral body to harmonize upwards worker rights and labour standards, as in the case of Europe, the parties agreed to principles designed to enforce domestic law. Normally, such a result would not be too disappointing because the focus of ILO international labour conventions has been on the ratification and inclusion of principles in national legislation, with compliance undertaken in a national context.¹⁸

The Labour Agreement, however, can be seen as a major step backwards from the ILO's position. The ILO measures national

practices against internationally agreed standards.¹⁹ But the present Labour Agreement does not have the machinery needed to enforce international worker rights and standards if they have not already been implemented into the NAFTA partner's domestic law. Nor are there provisions for developing additional trilateral rights and standards, which could become necessary as economic integration proceeds — or for ensuring the upward harmonization of labour standards at the regional level.

Health and safety standards for chemical, asbestos and lead exposure, for example, are much less stringent in Mexico than they are in the U.S. On the other hand, the worker participation provisions of Mexican legislation are decidedly superior to those of the U.S. The AFL-CIO has argued, therefore, that the mere enforcement of domestic labour law still prompts industry to migrate to the lowest-standard jurisdiction. "Eliminating this incentive will require changing those regulations, equalizing the real enforcement systems in the two countries and, the equalization of worker protection at the highest level".²⁰

There are also criticisms concerning the Labour Agreement's carefully circumscribed public participation.²¹ Labour and business groups may be involved in national advisory committees, or as experts, but they will not be able to bring disputes directly to the Labour Secretariat. Instead, they must work through their respective government's National Administrative Office. This is in sharp contrast to the direct access to the dispute settlement procedure for investors under NAFTA and for environmentalists under the North American Agreement on Environmental Cooperation (NAAEC).²²

The Labour Agreement can be seen as a "merely symbolic accord which does next to nothing to offset the potential for social dumping under NAFTA".²³ In almost half of all product categories of Canadian exports, Canada and Mexico are major competitors in U.S. markets. Much of the Canadian labour movement views an international agreement which excludes basic labour rights as a bad precedent. The NAFTA Labour Agreement provides trade remedies for health and safety, child labour and setting minimum wage. Complaints about the enforcement of worker rights — such as freedom of association and the right to collective bargaining — result merely in consultations and an obligation to report.

Signing of the NAFTA,
October 8, 1992



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Enforcement Procedures of the Labour Agreement

There is a general lack of appreciation concerning the enforcement provisions of the Labour Agreement. While most like-minded observers would agree that the actionable trade-related workers' rights and labour standards fell well short of what was necessary to achieve social cohesion, some observers believe that the result of the Agreement "was a non-binding cooperative side agreement."¹⁴ As indicated above, there are three labour rights/standards that can result in trade remedies. Despite these substantive provisions, however, the prospects for a successful complaint appear low because of serious due process concerns.

Three cases under the Labour Agreement have been initiated by U.S. trade unions and human rights groups since Jorge Perez-Lopez was designated as Secretary of the U.S. National Administrative Office (NAO), established by the Agreement.¹⁵ This is an office of the U.S. Department of Labor. Complaints were brought by the International Brotherhood of Teamsters against Honeywell's operations at Chihuahua, by the AFL-CIO against Sony's operations at Nuevo Laredo, and by the United Electrical, Radio and Machine Workers (UE) against General Electric's operations in Juarez, Mexico.

The complaint about the General Electric Company brought by the UE alleged the failure of the company, in its operations in a Mexican export processing zone, to ensure organizational and associational workers' rights and related labour standards on overtime and on health and safety concerning the use of chemicals in the plant.¹⁶

Pursuant to U.S. NAO Procedural Guidelines and Article 16 of the Labour Agreement, the union requested a Review by the NAO, including these requests: to obtain further information from the company, to hold a public hearing, to monitor a new vote by employees to freely choose their union representatives, to engage in consultations with the parties concerning the substantive and procedural rights of workers in Mexico under Mexican and international law – including the Labour Principles contained in Annex 1 of the NAFTA Labour Accord – and to issue a public report and make recommendations to the Secretary of Labor, if appropriate.

If the matters raised in this U.S. Review and Consultation Process were not resolved satisfactorily, the union requested that the NAO, pursuant to Article 22 of the Labour Accord, recommend to the Secretary of Labor to request consultations

at the Trilateral Ministerial level of NAFTA. These consultations would have included cooperative activities such as a program to promote workers' rights in Mexico's maquila sector and provide information material on workers' rights and labour standards to workers and to U.S. corporations which operate in Mexico.

If, following consultations, the remedies requested were not satisfactory outlined, the U.S. Secretary of Labor was asked to request an Evaluation Committee of Experts be established under Article 23 of the Labour Agreement in order to issue a report. At the end of two years of negotiations, trade measures were in theory available pursuant to Article 26 of the Agreement for alleged breaches of workers' health and safety, including overtime violations, if the offending party failed to implement an arbitral panel's recommendations. The complainant must prove a persistent pattern of failure to effectively enforce domestic labour laws, recognized by both countries, and affecting the production of goods and services traded between the parties.

But this case, as well as the Honeywell complaint, were not taken up by the U.S. NAO. A number of legal academics and practitioners have observed that the review applications were dismissed without natural justice, concerning the calling of witnesses, the submission of arguments and the adequacy of the reasons given to dismiss.

It should be noted that, in April 1995, U.S. Secretary of Labor, Robert Reich, recommended that ministerial consultations under Article 22 of NAALC go forward against the multinational Sony corporation at Nuevo Laredo for allegedly interfering in union elections. The consultations will focus on Mexico's local Conciliation and Arbitration Board's failure to register an independent union based upon technical deficiencies, resulting in the re-election of the official CIM union (U.S. NAO Public Report of Review of NAO Submission #940003, April 11, 1995, Washington, D.C). There is no time limit for resolving this ministerial dispute.

It is particularly troubling from an environmental perspective, that the complaint against General Electric raised health and safety issues regarding the chemical exposure of Mexican workers to substances reportedly prohibited domestically in the United States. Would the case have been decided differently if the U.S. NAO benefited from the environmental expertise and scrutiny provided by the NAALC?

Most importantly, despite the hope that the dispute settlement system would be open, transparent and useful – if only by shining the public spotlight on a situation – there was little official or media information available to inform the public of these first cases under the Labour Agreement. Unlike the U.S. NAO, both the Canadian and Mexican National Administration Offices under the Labour Agreement do not intend to hold public hearings, if and when, the dispute settlement mechanism is ever engaged! Developing adequate communication strategies for the NAAEC and NAALC, such as establishing an official public information registry, would appear necessary to advance the goal of sustainable development and transparency of the political process. The failure to ensure public hearings is outrageous and ought to be immediately renegotiated.

Trade Measures

The Canadian government distinguishes between the trade measures it is liable for in the event it fails to implement an arbitral panel report under the Labour or Environment Agreements, and those for which Mexico and the U.S. are liable under similar circumstances.

If a country fails to implement a panel report, a "monetary enforcement assessment" — a fine of up to US\$20 million — can be imposed. In the case of the U.S. and Mexico, failure to pay the fine would result in the suspension of NAFTA benefits and a duty imposed on offending products. It was critically important to the Mexican human rights and labour communities that trade measures be attached to the offending corporation in such cases: the social equivalent of the "polluter pays", and not the state government.

In the case of Canada, however, the fine would be enforced without appeal by the Federal Court of Canada. Under this arrangement it seems, a fine payment would come out of general revenues. In effect, Canadian taxpayers would underwrite the violation of workers' rights by Canadian companies. While the Canadian government may be able to claim victory over never facing a trade sanction, the government, under this arrangement, is arguably providing a subsidy and thus going against widely accepted liability principles.

Notwithstanding these serious concerns, the ILO is calling the NAFTA Labour Agreement the "most interesting current" example of a social clause.¹⁹ Interesting because, first, it is an

agreement among several partners and one with a strong north-south dimension to it; and secondly, because the agreement includes the possibility, albeit remote, that trade measures could be imposed.

Edward Brault, President of the International Centre for Human Rights and Democratic Development, argued during the NAFTA debate for the establishment of an independent, binational commission to monitor the human rights impact of the agreement in all three countries.²⁰ Various binational human rights groups have taken up the call for a parallel NGO human rights forum to integrate human rights into this expanding economic agreement.

1.5 Beyond NAFTA

Perhaps the merger of the NAFTA into other agreements in the hemisphere will improve it and revitalize the Organisation of American States (OAS). On January 1, 1995, a southern common market, "Mercosur", was set up. It will be the largest trading bloc in South America, uniting Brazil, Uruguay, Paraguay and Argentina into a common market. Eleven working groups have been established under the agreement, including Subgroup 11 on Labour Relations, Employment and Social Security. Subgroup 11 consists of tripartite representation of government, business and labour. Its agenda includes establishing common Mercosur-wide and guaranteed minimum social provisions to "prevent unfair asymmetries or market distortions".²¹

The OAS has 35 members, including the three signatories of NAFTA and most of the states in the Americas. All OAS members must abide by the Charter of the OAS and the American Declaration on the Rights and Duties of Man. The American Convention on Human Rights, a system with private petitions to the Inter-American Court of Human Rights, is binding only on those member states that have ratified it. None of the three parties to NAFTA has by declaration as yet ceded jurisdiction to the Court.

A number of new sectoral committees have been established in preparation for a more active OAS role in the hemisphere. An Environment Committee was created in 1991, and Women's and Justice committees have also been formed. As well, joint liaison committees have been organized, such as that on Women and the Environment. Most recently, at the May 1994 OAS General Assembly, a new Special Trade

Committee (STC) was struck. Launched with the support of the U.S. and Canada, the STC replaces SECON and is conceived as a forward-looking, effective organ, able to deal with new trade liberalization issues in the hemisphere. An advisory body to the STC was also created to commission technical studies on specific topics linked to the possible convergence of regional and sub-regional integration or trade liberalization systems.³⁰

A special committee on the social dimension of trade might be established, notwithstanding the OAS human rights principles. Indeed, the UN Economic Commission for Latin America and the Caribbean (ECLAC) recommends that the region proceed with "a platform of globally recognized minimum social conditions for more equitable trade and international competition."³¹ ECLAC is broader in membership than the OAS. It includes Spain, the Netherlands and France, as well as Canada and the U.S.

In summary, there are continuing efforts to integrate mechanisms for greater social justice into international and regional economic agreements.

Part II

ARGUMENTS FOR AND AGAINST A LINKAGE

The debate surrounding a linkage between trade and workers' rights and labour standards or a social clause is a multidisciplinary one, with overlapping concerns. The following is an analysis of the various arguments. They will be examined according to broad subject matter, beginning with economic and trade issues and the case against a linkage

2.1 Arguments Against a Linkage

Economic and Trade Issues

Developing countries often hesitate at voluntarily and unilaterally improving working conditions at home. There are various reasons for this. Some fear the competition and loss of capital to other countries unwilling to make similar improvements. Other countries are simply unable to implement internationally agreed standards, in which case trade measures or sanctions to enforce labour standards — such as suspending or withdrawing aid or imposing preferential trading terms or taking discretionary action in trading and financial policies — could prove to be detrimental. As well, the premature inclusion of labour standards in international trade agreements threatens to destroy one of the comparative advantages of developing countries — a favourable relationship between productivity and wage levels.

Some governments from emerging economies dismiss the notion of a linkage between trade and labour standards as protectionism by the north to prevent the development of the south. They argue that a social clause could drive up the price of goods and services to the point of harming their international competitiveness. The motive by the north for including a social policy in trade agreements is to avoid the essential restructuring of industries unable to withstand competition from developing countries.

Martin Khor, Director of the Third World Network, points to the very high levels of national debt as a cause of northern unemployment. Khor suggests that what is required is "drastic changes in macroeconomic policies", perhaps along the lines

of structural adjustment programs implemented by the World Bank and IMF.⁴¹ In Khor's view, a social clause could put the brakes on economic development just as much in the rich countries as in the poor ones.⁴²

Lastly, it could be said that developing countries have already paid for tariff concessions and other trade benefits contained in the WTO Agreements, for example, by agreeing to intellectual property rights protection. From this perspective, there is no economic benefit to be gained from a linkage between trade and labour standards.

Industrialized countries also point to the absence of an economic justification for including labour standards in international trade agreements. Canadian Trade Minister Roy MacLaren picked up on a statement contained in an April 9, 1994 editorial of *The Economist*. It maintained that "the costs of pressing for new links between trade and basic human rights outweigh the likely benefits". This implies that the failure to enforce human rights and labour standards has little impact on the market, and that there is little to be gained and much at risk, therefore, if a linkage were to open up new forms of protectionism.

The situation for the national governments of developed countries is complex. On the one hand, they are under pressure from human rights activists and unions to "do the right thing", as well as from national companies, which may be poised to gain a competitive trade advantage should the support of high labour standards become a WTO mandate. On the other hand, developed countries are under tremendous pressure from multinational corporations and investors, both of whom have a vested interest in protecting the status quo of developing country exports.

Many Asian states, recent converts to free trade and economic liberalization, remain suspicious of Western duplicity and point to the dichotomy of western multinational companies. These companies, they argue, locate in Asia "precisely to profit from cheap labour, absent trade unionism or compliant political regimes"⁴³ and yet "the most enthusiastic proponents of the social clause proposals are those who organize workers employed by multinationals in the west"⁴⁴. It is no surprise to most observers that these multinational companies themselves are among the most vehement critics of a social clause.

Political and Institutional Issues

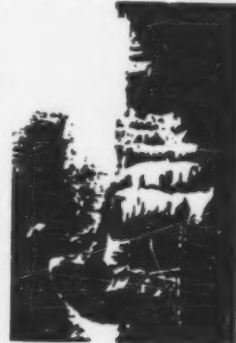
From an institutional perspective, no satisfactory procedure exists through which an independent and competent body sensitive to developing country concerns could settle disputes concerning a linkage between trade and labour standards.

Politically, there is a danger that the drive to link trade with new areas such as labour standards may result in unwarranted interference in a country's internal affairs. It has been said that unilaterally championing this linkage is an affront to national sovereignty.

Human Rights Issues

Opponents of a linkage between trade and labour standards also raise questions on human rights. Any definition of human rights is said to be necessarily culture-bound. Many Asian governments contend that the American version places too much emphasis on the political rights and freedoms of individuals and not enough on the rights of the collective, particularly the right to be protected from economic deprivation.⁴⁵

Field labourers in Argentina
Will the inclusion of labour
standards benefit all workers?



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Arguments against the inclusion of labour standards contend that, at best, it would benefit only those people working in the modern, more easily monitored sectors in developing countries, that workers in the informal sectors would not benefit, and that it would aggravate the dualism of the labour market and the rise of capital intensive investment.

2.2 Arguments For a Linkage

Economic Issues

The Link Between Economic and Social Progress

A major argument for including labour standards in international economic agreements is the belief that social progress should keep pace with a country's economic development. One way of achieving this is to ensure that employees have the right of association and can engage in collective bargaining with employers.⁴⁶

Conceptually, evidence as to whether social progress is keeping pace with economic progress would also signal

whether or not a nation is achieving sustainable development — the criteria of which might include economic prosperity, environmental enhancement and social justice. A social clause in trade agreements, then, is also a mechanism for ensuring that social progress keeps pace with economic development, based on international labour standards.

Proponents of a linkage on this ground might point to Malaysia as an example where opportunities for economic growth far outweigh the opportunities to advance social justice. A Financial Times report stated that: "Malaysia's rapid economic growth over the past two decades owes much to the expansion of its international trade, making it a major beneficiary of the liberal world trade regime".⁴⁹ Exports and imports now account for almost 80 per cent of GDP, up from less than 50 per cent in the 1960s. Malaysia is now the 16th largest trader in the GATT and foreign investment has played a large part in this development. Since 1967, 60 per cent of investment in manufacturing has been from foreign capital and largely directed at export production. In 1992, 70 per cent of Malaysia's exports were in manufacturing, primarily electronics, textiles and rubber-based products.

Notwithstanding these impressive economic statistics, the government of Malaysia continues to forbid workers the opportunity to organize themselves and bargain through independent trade unions. Multinational corporations like Texas Instruments, Intel and National Semiconductor have set up shop in Malaysia's electronics sector, and pay women \$0.45 an hour for unskilled production work. The Malaysian-American Electronics Industry Society declared that member firms would discontinue investments if unions were authorized.⁵⁰

One could also point to the southern part of the Americas which has the highest per capita income in the developing world (about US\$2,000 a year). At the same time, it has the world's worst record of income distribution. Extreme poverty combined with inequitable distribution policies has often led to political instability. Consider Colombia: of the 191 cases of human rights violations in Colombia examined by the ILO Committee on Freedom of Association, close to one-half involved alleged intimidatory murders during collective bargaining or industrial strikes. Wages for Colombian workers were found to be as much as 40 per cent lower than for workers in the maquiladoras on the Mexico-U.S. border in 1993. Mexico's concerns about social dumping and the

migration of investment and industry south appear to be well founded.

Despite great economic difficulties, some developing countries are making substantial social progress. It is especially significant to note that the developing countries genuinely trying to improve basic working and living conditions are the same ones which support a linkage between trade and social policy, significant because they are the most vulnerable to being forced out of world markets by countries and firms that refuse to observe basic human rights and labour standards.

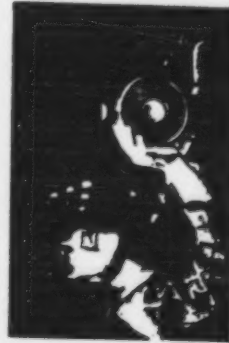
Women

A review of the recent literature suggests that the trend of industrial migration to the developing countries of Asia, such as Malaysia, Thailand, Indonesia, Sri Lanka and China, generally tends to favour aggregate female employment. S. Joekes contends that gender-based wage differentials reinforce the viability of the export of labour-intensive manufactured products to higher wage cost markets.⁵¹ But as countries move up the development spectrum, they become less reliant on unskilled labour-intensive manufacturing (as in the case of Singapore). Therefore, unless their acquisition of skilled labour keeps pace with the country's industrial and technological development, employment opportunities for women will decline with growth.⁵²

Vertical gender discrimination is quite common in Export Processing Zones and is beyond the reach of ILO Equal Remuneration Convention 100. There is significant wage discrimination in the female-dominated work force (80 per cent women) of Malaysia's electronics sector, for example. But though the Convention has one of the highest ratification rates (114 countries), it is difficult to find a comparator for males in a segregated job market.⁵³

Moreover, given the high levels of unemployment and discrimination in the formal sector, women in Africa, Asia and Latin America are increasingly being forced into the informal sector. There, they find themselves outside of the realm of most labour legislation, trade unions and training opportunities. This is especially true for women doing piece work at home. The ILO Convention 100 appears to be inadequate in both the formal and informal labour markets.

In southeast Asia, women are confined to low-paying jobs in the informal sector.



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Competitiveness, Consumer Demand and Corporate Codes

Proponents of a linkage maintain that there is a positive relationship between a country's competitiveness and a social clause. The UN Commission on Trade and Development (UNCTAD) has always maintained that developing countries need to adopt a very pragmatic approach to the new trade issues. In other words, they must start raising their standards now, or risk losing their competitiveness in the near future. And they must determine which industries will be the biggest losers, and therefore which measures they should start implementing now, and where they need to invest the most. The message from UNCTAD to the WTO is that these new areas will have to reflect national priorities, which cannot be imposed by the WTO.

"Radical Consumerism"

It has been said that by failing to press for the adoption of universal minimum labour standards in economic agreements, Western consumers and countries are collaborating in the exploitation of workers in developing countries. Consumers, both public and private, are increasingly interested in ethical purchasing, which includes concern about how products are produced and how services are delivered.

There is a growing trend toward what has become known as "radical consumerism". In what may be the next wave of social change, more and more consumers in the global marketplace are demanding information on the conditions and processes by which the goods they intend to purchase are made.

Ronnie Lipschutz offers his observations: "...in liberal economies only the realm of consumption has been left to civil society: one's politics are what one consumes. Thus, to consume 'Green Products' is to be 'Green'. The very homogeneity and pervasiveness of this consumer culture — and its extension to institutionalized politics as a historical process — has opened up a political space for the revival of a civil society."¹¹

The move to label carpets as "child labour free", endorse a Fair Trade Campaign, and sell "Max Havelaar" coffee (in Europe), which guarantees small producers a decent price through long-term contracts, are examples of the growing power consumers are exercising in the market. Businesses have been able to respond swiftly to consumer demand for

"green" and worker-friendly products, more swiftly perhaps than trade regulations allow at present.

Other examples include the Toronto Public School Board's decision to cease purchasing clear cut paper products from Canadian west coast forests and the U.S. National Consumers League's Christmas boycotts of toys made in China (in China's special economic zones, 10 year old girls are reportedly employed to work 14-hour days and required to sleep in company dormitories for as little as \$10 a month in pay. While the employment of children in export industries is prohibited in China, enforcement is difficult. In one case, however, when Chinese officials targeted child labour in one 2,666-worker factory, the manager for U.S. toy contractors threatened to close and move to Thailand.¹²)

Corporate Codes of Conduct

It appears that what nations require to enforce human rights and labour standards is not only additional institutional capacity, but also an acceptable mechanism to deal with multinational corporations, such as Corporate Code of Conduct or system of Country Reports on corporate labour practices.¹³

The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, approved by the ILO in 1977, is a first step in this direction. Among other statements, it calls for multinationals to respect the Universal Declaration of Human Rights and the corresponding international covenants adopted by the General Assembly of the United Nations. As the Declaration is not a Convention, however, it is not binding on member states or multinationals.

A code of conduct for multinational enterprises integrated in a multilateral agreement would formally oblige all member states to require that multinationals respect the established principles in the host country. The code could also specify the internationally recognized labour standards which the corporation must abide by in its operations abroad, either in the home jurisdiction of a multinational corporation or in the host country, whichever is more favourable to the worker. The ILO Constitution already recognizes national treatment and most-favoured nation status for workers. It provides that "in no case shall...the ratification of any Convention by any Member be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Conventions".¹⁴

If governments were to agree to link trade and social policy at the WTO, a supplementary WTO Corporate Code of Conduct would likely be necessary.⁵⁷ The business community is beginning to voluntarily respond to these market signals from today's consumers. For example, Levi Strauss & Co. issued Business Partner Terms of Engagement and Guidelines for Country Selection, prohibiting child labour and work beyond 60 hours per week. As well, Northern Telecom has entered into an understanding with China to use its best environmental practices. International business may need the WTO to establish social trade rules that level the playing field, so to speak.

Competitiveness

While adopting a social clause would affect the cost of goods and services and the competitive conditions of firms, costs could be raised relatively equally across the board, so that no single nation or firm would be made worse off. A social clause that focuses on universal standards, universally applied, would allow newly emerging exporters to retain competitive advantages in industrial country markets.

Freedom of association and the right to engage in collective bargaining create favourable conditions for developing wage levels and working conditions in keeping with a country's economic strength.

Many countries restrict the activities of unions or run them as an extension of the apparatus of the state. This practice deprives large sections of the population of a chance to achieve a decent standard of living. Rising wages in line with productivity would raise domestic demand and boost trade (preferably in socially and environmentally friendly products). Thus, the social clause foresees a virtuous circle.

Empirical evidence indicates that unionization has little effect on firm solvency. Contrary to the notion that "unions kill firms", union wage gains are a form of "rent-sharing". In other words, unions behave in an economically rational manner.⁵⁸ Unions can push wages to the point where union firms may expand less rapidly than non-union firms, but not to the point where the firm, plant or business line closes down. Higher union wages tend to come out of excess profits, not normal profits. When union-induced lower profits threaten firm survival, the unions can give concessions, enabling firms to survive as long as non-union firms.

In most cases applying universal labour standards as described would not adversely affect developing country competitiveness. In the area of forced labour, for example, where effects may occur, labour standards have been included in a social clause and their non observance constitutes a violation of human rights.⁵⁹ The standards envisioned in a social clause are not industrial country standards. Rather, they are the principles specified among the most widely ratified conventions of the ILO. As such, governments of all countries, regardless of their stage of development, should legitimately be expected to observe them.

Trade Issues

Protectionism

Protectionism is the result of trade legislation by a country to protect certain interests. Protectionist trade legislation can be described as: "that which protects domestic products or industries from foreign competition by providing higher tariffs on foreign goods or limiting them in number, even if that country has legitimately gained a competitive advantage."⁶⁰

Supporters of a social clause in trade agreements see the clause as being a function of internationalism, not protectionism.⁶¹ The dilemma from a regulatory point of view is not imposing protection versus opening the economy, but rather deciding the basis on which economic competitiveness is to be pursued.

A trade linkage with social policy is not aimed at particular industries or goods. It is a form of trade policy applied across the board. It is designed to define and limit unfair trade practices, and not to protect particular import-sensitive industries. The best way to disprove the charge of protectionism would be to couple labour standards with incentives such as reduced trade tariffs and barriers for complying countries.⁶² At its core, the idea of fair labour standards is not protectionist. It is anti-protectionist, it is anti unilateralism.⁶³

Indeed, freer trade is stymied whenever any trading partner questions the underlying fairness of the labour practices used by another. "Establishing a floor for worker rights has the potential of removing one of the chief justifications for import restrictions."⁶⁴ Republican Labor Secretary Bill Brock believes that: "Those countries that are flooding the world markets with goods made by children, or by workers who can't turn

free trade unions or bargain collectively, or who are denied even the most minimum standards of safety and health, are doing more harm to the principle of free and fair trade than any protectionist group I can think of".⁴⁴

Structural Unemployment and the Conversion of Industry

It has been said that: "The adoption of internationally recognized labour standards by the south is directly related to structural adjustment in the north."⁴⁵ As developing countries attain greater market access to industrialized economies, there will be greater pressure on workers in the north to move out of certain lines of production. The question from an environmental perspective is how to convert dirty industries in the north into something ecologically benign and prevent harmful production and process from migrating south.

From a social policy perspective, given the long-standing structural weakness of the Canadian economy, it is highly unlikely that high value-added, high-technology sectors — including telecommunications, machinery, aircraft and so on — can expand sufficiently to replace jobs lost in the traditional manufacturing sectors vulnerable to low wage/low (labour/social) standard competition.⁴⁶ Rick Jackson of the Canadian Labour Congress (CLC) noted the inevitable shift of some jobs from the north to the south with increased trade liberalization.⁴⁷ What the U.S. Congress demanded was that this shift include mechanisms such as a "social clause" to improve the social conditions of people in the south. Thus, while northern workers recognize that products from the south must have access to global markets, there is a need to establish rules for the global labour market and industrial conversion.

Developing countries have made it clear that they do not want to be completely sacrificed to the intolerant liberalism of global markets. France's ex-president, François Mitterrand, would want the leaders of these countries to be asked to respect the rights of workers. Mitterrand said he thought it was reprehensible to see that the very countries which justly struggled for independence from colonialism are themselves violating the fundamental rights of their own people.⁴⁸

Jacques Delors, then President of the European Commission, declared that: "If the present reshuffling of the cards leads to a relocation of our companies without bringing with it an improvement in the social conditions in the countries they

move to, we will lose jobs while they will gain nothing in terms of social progress. That is unacceptable."

Without minimum social standards, the willingness of workers in industrialized countries to cooperate in the restructuring of industries would be further undermined. This would upset the social cohesion without assurances that trade will not take place on the basis of unfair competition at the expense of workers in either developing or industrialized countries.

The absence of minimum international labour standards would place workers in a potentially disastrous competition against each other. From this perspective, international competition could lead to a destructive downward spiral in the conditions of work and life of working people around the world.

Business makes similar arguments concerning a "level playing field". If employers in the north are obliged to internalize more of the social costs of production into prices, it is only fair that developing countries or transnational firms should be required to bring into prices at least a minimum level of compliance with international labour standards. Including labour standards in the mandate of the WTO, would encourage producers to internalize social costs into profits or prices.

According to the Asian Cultural Forum on Development, a coalition of Asian NGOs, the internalization of social costs is the only way for a market economy to give due importance to the social and human aspects of development.⁴⁹

Social Dumping

When countries trade, the externalized costs that a government might agree to bear for the sake of economic development are not limited to that domestic economy or its preferred level of social or environmental standards. Because nations trade in an increasingly global market, the social costs that a country or a firm does not internalize, are externalized or dumped as a cost for other countries, firms and populations to bear. Another way of thinking about the concept of social dumping is to ask whether a nation's labour market policies and institutions indicate a lower wage and social wage (broad social entitlements such as social security, health care and education) than the economy could otherwise afford.

Accusations of "social dumping" are not limited to developing country situations, such as that between China and Thailand referred to above. Charges have been made between developed countries. France complained that the UK lured

away a Hoover factory with its relatively less onerous social cost burden for business. Canada complained about the U.S. "Right-to-work" laws in the south-eastern states, arguably the first export processing zone.¹⁰

The GATT provides that a country may impose countervailing duties to offset or prevent unfair government subsidies or dumping (products from one country which are introduced into the market of another country at less than the normal value of the product) where there is injury to the domestic producers of a like product. This may be done in accordance with Articles VI, XVI and XXIII of the GATT and with the GATT Code on Subsidies and Countervailing Duties.¹¹

The parties to the GATT have agreed on many occasions that rules ensuring fair competition are required in order to encourage the growth of trade. The anti-dumping provisions of the GATT, for example, provide mechanisms by which importing countries can ensure that exporters' national policies conform to certain basic rules. These rules can prevent cut-throat competition from disrupting and distorting world trade. As well, the set of principles regarding intellectual property foresees that domestic courts will enforce internationally agreed rules. If the new WTO is to attain true status as an international organization, it must begin the difficult process of integrating the third pillar of sustainable development into its mandate — social justice through social progress.

Legitimate Comparative Advantage

The "trickle-down" economic theory behind present trade policy does not necessarily ensure that social progress will keep pace with economic prosperity.¹² Increased exports do provide the resources for improvements, but only trade unions, through collective bargaining, or governments, through adequately enforced labour laws, can ensure that increased trade actually leads to a higher standard of living for all workers.

There is no evidence that labour standards necessarily rise with productivity or development. There is a positive relationship between productivity and wages in that higher labour productivity opens up the possibility of higher wages, but the precise division of productivity gains into wages and profits will depend largely on the nature of the labour market institutions, such as labour laws and collective bargaining.¹³ Consider Bangladesh: from 1980 to 1989, productivity grew by

Productivity in Bangladesh increased 20% between 1980 and 1989, but wages did not rise.



CITIA

20 per cent, but wages did not rise. During the same period in Mexico, despite a 28-per-cent increase in productivity, there was a 24-per-cent drop in wages in the manufacturing sector.¹⁴

Trade liberalization policies tend to establish a "beggar thy neighbour" downward incentive system, where governments compete with one another to lower standards to attract investment, rather than reward governments for improving their labour market institutions and other social policy goals. Contrary to legitimate comparative advantage, such an approach if left unchecked contravenes the principle of trade mutuality and threatens future trade liberalization initiatives.

Countries in which workers' rights are suppressed by force gain an unfair competitive advantage which goes against the principle of comparative advantage. An authority in this area, Peter Dorman states: "If labour costs are artificially reduced by the suppression of workers' rights then the allocation of production across countries will be less responsive to such legitimate factors as relative scarcities or productive efficiencies or characteristics of labour."¹⁵ Dorman's empirical work suggests that progressive reform of labour rights in developing countries can increase manufacturing wages in the order of 25 to 50 per cent.

Within the constraints concerning comparative advantage, it is possible to place different degrees of emphasis on social provision and the improvement of working conditions. The ILO recognizes that wage differentials linked to differences in the cost and standard of living may actually promote development, provided they are established with the participation of those concerned and their representatives, and that they do not fall below certain thresholds.¹⁶ Combined with a good level of productivity, low labour costs can be a critical competitive advantage for developing countries. A legitimate comparative advantage in this regard is sustainable — legitimate in the sense that lower levels of social costs are not artificially maintained.

In addition, the enforcement of minimum international labour standards must be based on reciprocity. In other words, industrial countries must be prepared to apply the same standards to their own industries, in both domestic and foreign operations.

Political and Institutional Issues

The GATT is designed as a set of governing arrangements that affect relations of increasing interdependence. In an *Irish Times* editorial, it was acknowledged that social dumping is seen to operate throughout the world: "The social clause debate seems destined to join the ranks of those transnational political issues upon which interdependence is predicated: the environment, security and energy policies, for example".

Trade rules, by definition, limit absolute political sovereignty. One major advantage of seeking trade remedies through multilateral fora such as the WTO or the ILO is that the criteria for determining that a domestic practice is unacceptable can be developed and implemented in a more neutral international setting. The criteria are thus less likely to be arbitrary or influenced by political pressures within the offending country.

Unilateralism vs. Multilateralism

Including labour standards in international trade agreements could call a halt to the spread of unilateral protectionism. While a multilateral framework is ideal, it cannot be denied that unilateral action by nations, human rights groups and consumers has a place in moving the social agenda forward. (See above for examples of unilateral and plurilateral social clause initiatives by the U.S., the European Union and the NAFTA Labour Agreement.)

The South Asian Coalition on Child Servitude in India (Satyarthi) has mounted a campaign to label carpets from the region, guaranteeing that they have not been produced with child labour, particularly bonded child labour. The campaign found support in the U.S. Harkin-Brown Child Labor Deterrence Act, an act proposing to prohibit the import of products manufactured by workers under the age of 15.⁷⁷

While the U.S. imports 40 per cent of the carpets targeted for export, Germany is the market's largest importer. As part of Satyarthi's campaign, the Coalition approached German NGOs and formed a private certification organization. Composed of Indian NGOs working to eliminate child labour, as well as carpet manufacturers operating without child labour, German trade specialists and unions,⁷⁸ and UNICEF representatives, the organization will work to ensure that the "Rugmark" label is used properly.

With more than 50 exporters now participating, the campaign has had a particular impact on German consumers, importers

and retailers. Eventually the Coalition hopes to achieve an import ban on all non-labelled carpets and limit the financial resources necessary, perhaps by imposing a 2 per cent surcharge on imported carpets, to help the governments of the developing countries concerned provide an education for the displaced child workers.

According to the Asian Cultural Forum on Development, there is wide support for the initiative to label South Asian hand knotted carpets "child labour free".⁷⁹ But Farhat Mazhar, Director of UBINIG, a Bangladeshi research and development organization, warned Canadians that: "Boycotts and trade sanctions will not deal with the root of the problem, and will sometimes make things worse for exploited workers in the Third World".⁸⁰ But is this not the same debate we had about the boycott of South Africa?

A multilaterally operated social clause would be fundamentally different from unilateral initiatives, such as the U.S. conditioning of its Generalized System of Preferences. Unilateral initiatives often raise north-south issues and could lead to discussions on east-west values, as was seen at the recent Vienna Conference.

Institutional Forum and Cross-institutional Linkages

In this author's view, it is clearly best for any trade measures linked to human rights and labour standards to be authorized and implemented multilaterally. This would not only insulate these issues from parochial motives in any particular country, but also develop the expertise of global organizations. It will likely be necessary to integrate the mandates and functions of major international institutions like the WTO and the ILO and the Rio Commission on Sustainable Development, in order to build the confidence of diverse interests and communities and to achieve sustainable development (however it is eventually defined).

Yet some authors advocate a revitalized ILO "to provide some teeth to the organization's standards-setting role which rightly takes into account differences in stages of development prior to setting standards".⁸¹ This position stems from a concern that negotiations over labour standards at the WTO would offer less hope for preferential treatment for developing countries.

Khor maintains that these issues are best considered within the ILO, a more internationally democratic UN framework than the WTO, which is controlled by the north. Khor contends "If

The carpet industry in Indonesia has a high incidence of child labour.



ILO members should feel that there should be a trade link with labour standards, the decision to make that link, and the determination of what that link is, should be discussed and acted upon within the ILO."

Others point out that, "While the ILO is currently the only international body responsible for globally monitoring workers' rights, it has no enforcement power. Its tripartite charter between employers, governments and worker groups substantially reduces its ability directly to confront governments and employers."⁴¹ Indeed, it has been observed that if the social clause were enforced by the ILO alone, it would politically never be able to find a problem with, say, Mexico's compliance with ILO conventions.

In addition to concerns about the effective use of ILO compliance mechanisms, the lack of public participation and transparency at the WTO deserves public attention. In order to link workers' rights with global trade, organizations dedicated to protecting workers' rights need to have a voice in GATT, where global trading rules that directly affect workers and consumers are made and enforced.

The WTO needs to accommodate "social policy NGOs" in the trade policy and rule-making part of its work. The Asian Cultural Forum on Development, however, states that participation must involve more than just the northern dominated ICFTU. The WTO has accommodated the diverse environmental community from the north and the south by striking a Committee on Trade and the Environment. While this body falls short of WTO Council status regarding intellectual property rights, it is nevertheless a contact point for functional integration.

Environmental expert Steve Charnowitz also warns against the trap of continually debating the appropriate forum in which to discuss labour standards: "When the three Latin American countries brought up International Fair Labour Standards at the conference to establish the earlier International Trade Organization, other nations stated that the subject should be discussed in the ILO rather than the ITO. When labour standards were considered at the ILO meetings in the early 1970s, the U.S. suggested that the matter be referred to the GATT or to the UN Conference on Trade and Development. When the U.S. raised the issue at the Preparatory Committee of the GATT for the Uruguay Round of trade negotiations, several countries, including Brazil, New Zealand and Singapore, maintained that the ILO was the proper forum for its discussion, not the GATT."

There is growing recognition of the need for institutional cross-linkages between human rights and economic principles. Democracy, it has been observed, "involves not only the implementation of a cluster of civil, political and social rights, but also the pursuit and enactment of these rights in a complex, intergovernmental, and transnational power structure. Democracy can only be sustained in and through organizations and agencies that form an element of and yet cut across the territorial boundaries of the nation state, within international power centres."⁴²

Where there is a linkage between trade institutions such as the WTO, on the one hand, and human rights and labour organizations, on the other hand, there also ought to be compatible mandates and joint jurisdiction on common matters. The specialized expertise and competence of the respective organizations must be taken into consideration as well.

Human Rights Issues

A social clause in the WTO would have to reflect many human rights issues deriving from principles of democratic and sustainable development.

Third World Network Director Martin Khor contends that the poverty of the general population ought not to be an excuse or pretext for exploiting workers in particular companies or industries. The Third World Network supports the policy that workers and their unions in the south have a legitimate right to organize against exploitation and rights to adequate wages, working conditions, employment, social security, worker safety and occupational health.

Democratic Development

National sovereignty is not sacrosanct, but it is wrong to invoke it to shield massive human suffering or malevolent governance.⁴³ Certain governments denounce the social clause initiative under the guise of protecting their right to economic development. But one must ask for whom do these governments actually speak? Edward Broadbent, President of the International Centre for Human Rights and Democratic Development, explains: "Those who claim that rights are a form of protectionism should listen not to the governments, but to the NGOs who speak much more directly for the voice of freedom in those countries where basic human and workers' rights are denied".⁴⁴

For example, the 1993 Bangkok NGO Declaration on Human Rights stated: "International solidarity (in the protection of human rights) transcends the national order to refute claims of state sovereignty and non-interference in the internal affairs of a state." (Emphasis in text)

Asian NGOs at the Bangkok meeting were openly critical of repressive governments. They specifically underlined the importance to society as a whole of democratic and trade union rights.⁴⁷ The 1993 NGO Declaration states: "While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated". The UN and the governments of the north and south were called upon to ensure that the policies of the GATT, the IMF and the World Bank comply with UN and ILO standards.

In the final Declaration from the 1993 UN World Conference on Human Rights in Vienna, the 184 states, including China, agreed that "the universal nature of human rights is beyond question" and that "the lack of development may not be invoked to justify the abridgement of internationally recognized rights". While the conference affirmed that trade union rights are basic human rights, it failed to support concrete ways of improving the monitoring of trade union rights.

According to a report by the ICFTU, some Asian governments claimed in Bangkok that ILO standards do not take into account Asian culture where collective economic rights are more important than individual rights. This theory was rejected by Asian trade unionists. Chinese independent union leader Han Dongliang told the Vienna Conference, "Human rights in general and workers' rights in particular are universal." "It is not the Asian people who are coming out with this, but rich and repressive elites", said the trade union rights director for the ICFTU's Asian Pacific office.⁴⁸

There is, however, an issue with respect to the misuse of comparative labour standards. A leading scholar Otto Kahn-Freund warns: "In my opinion, individual labour law [hours of work, and so on] lends itself to transplantation very much more easily than collective labour law. Standards of protection and rules of substantive terms of individual employment can be initiated - rules on collective bargaining, on the closed shop, on trade unions, on strikes, cannot".⁴⁹ This caution suggests that there might be a trade-off. If cultural or political differences prevent a country from embracing the more

politically charged collective rights, it might demonstrate excellence with respect to rising individual labour standards. Again at the 1994 ILO Annual Conference, some South East Asian governments were decidedly unsuccessful in their attempts to have a resolution criticizing the social clause adopted.⁵⁰ The significance of the vote is that it was supported not only by worker representatives but also by a significant number of government representatives who supported the social clause concept.⁵¹

With regard to the split between the Government of Malaysia and the largest trade union, the Malaysian Trade Union Congress (MTUC), on the question of a social clause, The Malaysian Business Times reported: "The MTUC supports the imposition of the social clause because its leaders think the clause will help improve the position of Malaysian workers". But the keys to improving the position of Malaysian workers, the report continued, are sustained economic growth, political stability and harmonious industrial relations. "Developing countries have to resist the attempt to use the ILO and international labour standards to slow down their development" ... (and) need to develop first before they can afford to think about higher salaries and a shorter work week ... There are more pressing concerns now like job creation, easing unemployment, training the work force, and increasing productivity". (My emphasis)

Yet trade unions in Malaysia, Singapore and Pakistan support the need to globally regulate the rights of unions to exist, organize and engage in collective bargaining.⁵² According to Bala Tampoe, leader of Sri Lanka's textile workers' union, "The need to sacrifice progress in the field of trade union rights for the sake of development is a delusion that allows for workers to be exploited by corrupt elites and authoritarian regimes."⁵³ The ICFTU affiliate Botswana Federation of Trade Unions and the employers' federation (BOCCIM) have agreed to press their government to include a social clause in international trade agreements.⁵⁴

Suppressing civil and political rights in favour of promoting economic growth without human development is to deny that international human rights are indivisible and interdependent. The UNDP's (United Nations Development Programme) Human Development and Human Freedom indexes stress that there is a remarkable correlation between high levels of human freedom (civil/political rights) and high levels of human development (physical/material well-being). It has been found

that "political freedom (civil/political rights) and human development (social/economic rights) do seem to move in tandem", and that countries with high levels of political freedom also have high levels of human development.³⁰

Sustainable Development

The 1986 UN Declaration on the Right to Development recasts the economic right to development in terms of sustainability and inter- and intra-generational equity, drawing an unconditional link between economic development and human rights' enhancement. Article 1 states: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully recognized".

The right to development was further refined at the 1992 UN Conference on Environment and Development. Principles 1 and 3, respectively, of the (non-binding) Rio Declaration state: "The right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations" and "human beings are the centre of concerns for sustainable development". The human right to inter-generational equity (and by extension intra-generational equity) became a key component behind the shift in conceptual framework to sustainable development.

While the market has made some progress concerning environmentally sound development, the social dimension of economic integration deserves further accommodation by a conceptual framework that defines sustainable development as encompassing the economic, environmental and social needs of present and future generations.

Dualism in the Labour Market

It has been said that, at best, a social clause might improve the lives of workers in the formal sector — often the export sectors — of a developing country's economy, but that it would increase the disparity between this sector and the informal labour market. In fact, a minimum package of international labour standards would help support the capacity of countries to legislate and enforce labour relations, individual employment and social law. Consequently, this would improve their capacity to effectively meet their population's basic human needs for freely chosen work in both

sectors. Ultimately, the objective of a social clause is to end the abuse and exploitation of workers in formal and informal sectors.³¹

According to the Expert Meeting on the Exclusion of Productive Employment in preparation for the 1995 World Summit for Social Development³², labour markets would improve if legislation of minimum wages, for example, were based on the recognition of their proper role: that of protecting "the vulnerable segments of workers who are without bargaining power, not to try to price labour above levels which discourage the employment of the lowest skilled workers".

Democracy and Market Efficiency

A sufficient degree of compliance with political, civil, social, economic and cultural rights appears necessary to achieve political stability and therefore sustainable development. Economic prosperity and investor confidence requires a foundation of social cohesion.

There is compelling evidence that the stability of democratic systems may be threatened if political elites ignore socio-economic rights or fail to redress the extreme material inequalities that may accompany economic growth.³³ Recent empirical work by academic Edward Muller, for example, finds a strong and consistent statistical relationship between high levels of income inequality and democratic instability.³⁴ Moreover, as Ian Robinson observes: "High quality democracy has promoted lower levels of income inequality and higher levels of productivity growth than most authoritarian regimes. Strong, democratic labour movements have played a critical role in bringing about these outcomes".

Part III

OPPORTUNITIES FOR A WTO LINKAGE

3.1 The World Trade Organization

Fifty years after it was originally envisaged at the Bretton Woods Conference in 1944, the World Trade Organization (WTO) will put international trade on a firm institutional framework. The WTO will become the third pillar in the world's economic and financial structure (along with the World Bank and the International Monetary Fund).

The Canadian trade delegation contended that the results of the 1990 Uruguay Round needed to be housed in more than a "provisional shelter" and proposed that a world trade organization be created. The "Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations" (Final Act) saw the creation of the World Trade Organization (WTO).

The WTO will be governed by a biennial Ministerial Conference, composed of representatives of all member organizations. A General Council, similarly composed, will meet more regularly to oversee the administration of the Integrated Dispute Settlement Body, the Trade Policy Review Body and three Councils covering trade in goods, services, and trade-related aspects of intellectual property. The actual administration will be undertaken by the WTO Secretariat.

The Uruguay Round produced some 28 agreements with provisions to establish about 20 bodies¹⁰ to administer them under the WTO as the common institutional framework for conducting trade relations among members. In most cases, tariffs on manufactured goods will be reduced by an average of one-third over ten years. Importantly for developing countries, the Multifibre Arrangement, designed to adjust northern textile and garment manufacturers to southern competition, will be eliminated in the year 2005.

From the perspective of small and middle economies such as Canada, the dispute settlement procedures were improved. It will no longer be possible to indefinitely block the dispute settlement panel's reports and conclusions. Under current

rules, any Party can block the adoption of a GATT Panel Report. The draft Final Act would change the procedure so that panel reports would be adopted automatically unless opposed by all WTO members, or appealed by a party to the dispute. Appellate reports would also be adopted unless opposed by a consensus of WTO members.

The Marrakesh Ministerial Meeting in April 1994 saw the creation of the Preparatory Committee (PrepCom) of the WTO. Under the chairmanship of Peter Sutherland, the PrepCom will ensure the transition from the GATT to the WTO. The January 1995 proposed deadline for the establishment of the WTO remained firm, although the least-developed country participants were given until July 1995 to complete their WTO schedules on goods and services. (Canada and the U.S. have implemented the final Act on the establishment of the WTO.) According to PrepCom chair Peter Sutherland, the PrepCom will, "most of all, complete the transition from a trading system which largely restricted itself to policies at the border to one which also covers most aspects of domestic policy-making affecting international competition in goods, services, and investment".¹⁰¹ Importantly, the PrepCom is also responsible for discussing proposals to add new issues to the future WTO work program.¹⁰²

The WTO was formed to provide a forum for ongoing negotiations on new trade issues. Difficulties could arise with this approach, however. Previously, in the GATT rounds, it was perhaps easier for countries to trade off concessions and thus increase the likelihood of an overall negotiated package. In more focused negotiations, the dynamic of trading off interests could be diminished, though the pattern does seem to have survived in areas such as intellectual property rights and the newer issues of the environment and labour standards.

Cross-institutional Connections

The main rationale for establishing a world trade organization is to support a multilateral framework for conducting trade and promote greater coherence in international economic policies through cooperation with the IMF and the World Bank. There was great fear in the trade community that the U.S. would otherwise continue to expand its practice of threatening unilateral trade sanctions under its Section 301 laws, and that Europe and Japan would introduce their own versions of "Super 301", and the world trade system would eventually collapse under the weight of protectionists' walls.

According to Khor, the programmes and policies of the WTO will almost certainly be coordinated with the World Bank and IMF. The likely result is "cross institutional conditionality", in which World Bank loans to a developing country may be conditional upon the country's having a good "report card" from the WTO. A report would confirm that it has adequately complied with certain rules. Critics of institutional reform of the GATT contend that it will lead to a weakening of the United Nations on trade matters¹⁰³; a consideration as the UN is the only multinational organization in which developing countries can have some say.¹⁰⁴

On the other hand, there seems to be a positive trend towards cross-institutional activity among certain international organizations. The International Labour Organization, for example, has chosen India, Costa Rica and Zimbabwe for a pilot project where the ILO and the IMF will study the effects of structural adjustment and ways of alleviating the resulting social hardships.

The emerging "good governance" agenda of the older international financial institutions (IFIs) and the new European Bank for Reconstruction and Development is a tacit recognition that economic reforms require attention to non-technical phenomena — such as human rights and political pluralism — if they are to succeed.¹⁰⁵ In effect, the very concept of a "social clause" is an exercise in cross-institutionalizing a linkage between the ILO and the new WTO. In a recent article, Canada's Minister of Trade Roy MacLaren stated: "Bold and decisive results are necessary if the WTO is to take its rightful place as one of the great multilateral institutions".¹⁰⁶ Now that the subject of labour standards is no longer taboo in trade circles, serious consideration can be given to the positive, functional integration of the Bretton Woods institutions with the UN system.

New Members

The WTO PrepCom is also responsible for preparing a large number of accession applications from prospective new members of the WTO. Among them is China.

China has been warned by U.S. Trade Representative Mickey Kantor that it must "play by world trade rules" and radically change its trade practices before the U.S. and the Europeans will support China's bid to become a founding member of the WTO.¹⁰⁷ At the very least, China will need to protect

Roy MacLaren,
Canada's International
Trade Minister



CANAPRESS

intellectual property rights, provide better market access, and give fair and equal treatment to all trading partners.

China recently took steps to adopt a new Foreign Trade Law system. But broad commitments from that country in the area of human rights seem unlikely, however, since President Clinton renewed China's trading status as a Most Favoured Nation (MFN).

Despite the difficult human rights situation in China, evidence presented before the U.S. Congressional hearings concerning China's MFN status suggested that engaging China is perhaps the most effective way of nurturing respect for human rights in that country. Former U.S. Ambassador to China, Winston Lord, testified that China's export sector, which would be the most negatively affected by a termination of MFN status, is the most progressive sector of the economy, "whereas those dominated by central planning state enterprises don't send so much to us. So, the specific impact is precisely on those forces that we want to help as opposed to the central government".¹⁰⁹

Ed Broadbent, President of the International Centre for Human Rights and Democratic Development, has another analysis, however, demonstrating that international attention on the human rights situation in China can potentially influence its practice of violating these basic rights: "Last week [mid-December 1994], Chinese courts sent nine people to jail for up to 20 years because they had the temerity to exercise their right to peaceful dissent. Court proceedings were delayed last fall because of an application for the Olympic Games; they were further delayed because of the pending U.S. decision on most-favoured nations (MFN) trading status; then once again because of the massive Canadian trade delegation. Now, however, the full weight of the Chinese 'justice' system has been levelled against the accused originally charged in 1992. Virtually all these draconian sentences were pronounced against citizens simply for peacefully exercising their human rights recognized in every democracy of the world."¹¹⁰

China is reported to have 20 million people in prison, about the size of France's working population. French industry and Foreign Trade Minister Gerard Lorpquet expressed an interest in knowing how all of these prisoners were spending their time. Commenting further at the Marrakesh Ministerial Meeting in April 1994, Lorpquet said that the governments of China, Indonesia, South Korea and Thailand must "take account of the most basic social rights".¹¹¹

3.2 The WTO and Labour Standards Connection

Government Statements About a Linkage

At the Ministerial Meeting of the GATT on April 15, 1994, various representatives made statements on the new issues, including the linkage between workers' rights and labour standards and world trade.¹¹² The U.S. and France - against staunch opposition by some other governments - managed to negotiate an agreement that the issue of a linkage between trade and labour standards would be considered by the Preparatory Committee designated to develop the WTO's agenda.¹¹³

The meeting concluded with PrepCom chair Peter Sutherland noting that the Ministers had stressed the importance attached to the examination in the PrepCom of the following issues: "the relationship between the trading system and internationally recognized labour standards, the relationship between immigration policies and international trade and the link between trade, development, political stability and the alleviation of poverty".

Europe

Sir Leon Britton, the EU's External Trade Commissioner, said that the WTO will work with the ILO and other organizations in addressing problems such as child exploitation, forced labour and the denial of workers' rights to free speech and free association. According to Britton, it would be worthwhile working towards a system of graduated standards of protection in which, as countries become more developed, they could be required to comply with increasingly demanding standards.

Addressing the Marrakesh Ministerial Meeting in April 1994, Britton said that "there must be fully adequate safeguards against unilateralism or protectionist abuse" and made the alternative suggestion that countries might consider reinforcing labour protection rules established by the ILO. He also added that "there should be increased pressure on the U.S. Administration and others like them to ratify key ILO conventions in the fields of forced labour, discrimination and union rights".

The European Parliament had threatened to hold up the EU's ratification of the WTO unless the accord contained a commitment to social protection. In a strongly worded

resolution, the European Parliament appealed to the global trade group for the protection of workers and their unions, and the barring of products produced from child and forced labour.¹¹⁴

Importantly, Europe is preparing to legislate its own version of Section 301 of the U.S. Trade Act, 1988. The Uruguay Round has provided the impetus to complete the external dimension of the Internal Market and reform the Union's import principles and "commercial defence mechanisms" in EU foreign ministers agreed, in February 1994, to scrap thousands of national import quotas and take "effective action against unfair trading practices". The EU has retained its control over "state-trading enterprises", allowable under the GATT, concerning a number of imports from China.

The EU Council of (Foreign) Ministers has retained the power to impose countervailing and anti-dumping duties to offset unfair trade practices. Now, however, decisions can be made by a simple majority (51 per cent). It remains to be seen whether the EU Social and Foreign Affairs Ministers can integrate the social dimension with the external-trade dimension of the European Union and develop a European social clause.

United States

U.S. Trade Representative Mickey Kantor stressed, "Increasingly, we will address issues related to each other's internal policies, such as the competition policy, and other domestic regulatory policies, as well as environmental protection and labour standards". Kantor lists the following as internationally recognized labour standards: "freedom of association; freedom to organize and collectively bargain; freedom from forced or compulsory labour; a minimum age for the employment of children; and acceptable conditions of work".¹¹⁶

The Clinton Administration has identified the so-called Big Emerging Markets (BEMs) where the majority of U.S. trade is expected to continue growing: China, Indonesia, South Korea, India, Turkey, South Africa, Poland, Argentina, Brazil and Mexico. The first step for increasing international trade with several BEMs is to resolve conflicts over non-trade issues. In revised development in the BEMs will also inevitably put pressure on workers in industrialized countries because, as the BEMs are lures to a vast surplus of labour, their workers will either offer themselves for less than world market prices or

move to where the work is available. According to Undersecretary of Commerce, Jeffrey Graton, that is why the U.S. is committed to raising the standard of living in the developing world in addition to giving U.S. workers more education and training in order to compete in the world economy.¹¹⁷

Some Other Governments

India's Minister of Commerce, Pranab Mukherjee, said that while India was strongly committed to internationally recognized labour standards, it could not see any merit in linking labour standards to international trade. On the other hand, he attached great importance to a WTO PrepCom examination of the relationship between immigration policies and international trade.

In a surprising turnaround, Mexico's Secretary for Trade and Industrial Development, Jaime Serra Puche, stated: "Protection of the environment and workers' rights must go hand in hand with efforts to liberalize world trade, for progress in liberalization generates resources to improve the environment and the well-being of workers".¹¹⁸

Canada's Trade Minister, Roy MacLaren, emphasized that the WTO should proceed in a manner consistent with its competence and mandate. He cautioned that, "When examining new issues, we must, for example, be wary of being seduced by the argument that differing approaches to issues such as environmental protection constitute an unfair trade practice justifying some sort of action. New issues can become a vehicle for new protectionism". According to MacLaren, "To fall victim in the WTO to the narrow interest groups who favour trade sanctions as the instrument of choice to force nations to comply with the policies of others would be to abandon some of the most fundamental gains we have made".¹¹⁹

Brazil, speaking for the caucus of developing nations, expressed "utmost concern" about proposals to include "workers' rights and international labour standards" on the agenda of the WTO. The Brazilian ambassador said it was "the considered view" of developing nations that "the attainment of higher labour standards is fundamentally a matter of debate within each individual sovereign state".¹²⁰

All major Latin American countries are now members of GATT and subject to its rules. And most have signed, if not ratified, the WTO.¹²¹ At the Marrakesh Summit, however, most Latin

American governments opposed the incorporation of a social clause for fear of "protectionism". The Colombian government was shocked by statements made by representatives of the British Parliament that Colombian coal imports would have to be re-examined because child labour is used in the mines. The government, backed by the media, called for a national outcry against the "protectionist measures" adopted by England. As was stated by the organization Latin American and Caribbean Trade Alert: "... We all know the allegations of child labour in the mines are true."¹²¹

British Finance Minister, Kenneth Clarke, stated that the WTO is not the right forum to discuss or impose minimum labour standards on developing countries.¹²² "None of us condone slavery or child labour, but trade policy is hardly the most effective weapon we can use to fight them," he said at an IMF meeting. Clarke acknowledged that it is not true that businesses can only become more efficient at the expense of social justice, but states: "It is crucial that the social security system does not impede the efficient working of the market any more than absolutely necessary".

At Marrakesh the idea of a linkage between trade and labour standards was vigorously disputed by various Asian government representatives, including trade ministers from China, Malaysia, the Philippines, India, Indonesia and Australia. At the same time, Asia's share of world exports and imports has increased from approximately 22 per cent to approximately 32 per cent — an increase of nearly 50 per cent in 10 years.

The Association of South-East Asian Nations (ASEAN) is comprised of Brunei, Indonesia, Malaysia, the Philippines, Thailand and Singapore. At the beginning of 1992, ASEAN countries agreed on a Common Effective Preferential Tariff Scheme, with the aim of achieving an ASEAN free trade area within 15 years.

ASEAN countries, however, have already decided to oppose "any social clause" proposed for future international trade negotiations.¹²⁴ According to Alberto Pedrosa, the Philippine's ambassador to the EU and chair of the ASEAN Committee in Brussels, "A solution to the European Community's own stagnation cannot be found in a social clause." The EU and U.S. governments refute this allegation, however, stressing: "Against the background of opening up markets and growing economic interdependence, the inclusion of the limited labour protection standards they are seeking is both timely and appropriate."¹²⁵

Prospects For A Linkage

Months of negotiations have succeeded in clarifying these new issues. Both the U.S. and the EU agree that they are not seeking a perfectly level playing field in which wages and health and social security legislation are the same everywhere.

Rather, they will "communicate on the labour issues which are essentially to do with human rights, where objectives in these areas remain valid regardless of a country's level of development, and include respect for trade unions' rights and bans on the import of products made by unpaid prison labour or involving the exploitation of children."¹²⁶ This statement also captures the likely basket of workers' rights and labour standards which the WTO will entertain.



Prisoners working in Brazil

CHIA

How likely is it the governments of developing countries will agree to negotiate these matters? In addition to the dynamic of consumer demand, there are direct trade concessions that can be traded off. John Curtis of the Multilateral Trade Institutions Division of Canada's Department of Foreign Affairs reflects: "The participants were probably exhausted from the round of world negotiations, but also recognized that any demands for labour and environment standards will be met by developing country demands for greater market access and the reopening of the intellectual property agreements."¹²⁷ Indeed, it would seem that a more flexible approach to intellectual property rights in the north might allow developing countries to buy into a linkage between trade and labour standards, human rights and immigration issues. Certainly there are many NGOs that would welcome the opportunity to reexamine the intellectual property rights presently being negotiated in various fora.¹²⁸

But since the 1994 elections in the U.S., the Administration may not be so keen to pursue matters in this new trade area of intellectual property rights. A concerted campaign will be required to agree on a deadline for establishing the WTO Labour Standards Committee. It is critical that a priority of the agenda of the WTO PrepCom be the establishment of a Committee on Labour Standards. The WTO PrepCom must also have the mandate and resources it needs to develop the Committee's work plan to identify the issues, players and options for further cross-institutional discussion.

The OECD and Labour Standards

The next critical step for a linkage is the analytic work to be carried out by the OECD (Organization for Economic Co-operation and Development). While the OECD is admittedly a northern think-tank, it does have a tripartite structure — formed of representatives of business, labour and government.

At the June 8, 1994 OECD Council meeting, the Ministers' press release recommended that the WTO focus on the new global issues of the linkage between trade and environment, relations between trade and labour standards, trade and investment, and competition policy under world trade. Member countries expressed their commitment to giving particular consideration to developing countries in dealing with these new trade issues. The WTO warned against the use of "unilateral retaliation-oriented measures" as a tool for settling bilateral trade disputes. It underlined, however, that it was important for the OECD "to continue to build up contact, dialogue and cooperation with non-member countries which are gaining relevance in the world economy and are basing their development on market principles, pluralist democracy and respect for human rights, as OECD countries have long done".¹⁶

Previously, the OECD approached global labour market issues as an aspect of labour adjustment to industrial restructuring in the north, somehow removed from the adoption of internationally recognized labour standards by the south. At the Council meeting, Minister Roy MacLaren stated that the OECD was well placed to examine the emerging issue of trade and labour standards: "Globalization can raise concerns about potential comparative advantages based upon lower labour standards, intensifying the insecurities that workers in the industrialized world already feel in the face of technological and economic change. We must define the problem. We must find a common language, knowledge and understanding.... Most importantly, in this area, as with trade and environment, we must make progress only on the basis of mutual consent. Canada does not support the use of trade sanctions to impose standards of conduct".¹⁷ (My emphasis)

In reviewing Canadian Foreign Policy, however, Sylvia Ostry, chair of the University of Toronto Centre for International Studies, makes a salient point. She states, "There is an important distinction between trade sanctions on the one hand and trade restrictions on the other hand. Where there is no agreement on the foreign policy issue, the technical term of

the use of trade is a sanction. But where there is an agreement and rules, the technical term is a restriction."¹⁸

Consequently, the design of a social clause and the associated labour-related trade measures — that is, the entire range of trade compliance tools from reporting, consultations, cooperation activities, taxes, charges and fines, to import restrictions and bans — will need to take into account these nuances and sensitivities. Recall how important it was for Canada, as a middle-sized economy in the NAFTA Labour Agreement, not to be seen to have agreed to "trade sanctions".

During the Canadian Conservative government's second term, International Trade Minister Michael Wilson established a number of task forces to advise him on the future of trade policy. The Task Force on Labour Practices and International Trade was co-chaired by James McCambly, President of the CFL (Canadian Federation of Labour),¹⁹ and Roy Aulken, CEO of Inco Ltd. The task force's 1991 report recommended that the Canadian government take the following measures:

- recognize the linkage between labour practices and international trade, and the potential trade distortions that can result from the denial of workers' rights or impeding the effectiveness of unions.
- develop criteria to identify unfair labour practices and quantify the impact of labour-restrictive government interventions on Canada's international trade, including impacts on investment and employment.²⁰
- support the establishment of a GATT Working Committee to examine the relationship between labour standards and international trade and recommend appropriate trade remedy provisions, possibly based on the current practice of countervailing duties to offset or prevent dumping or unfair government subsidies.²¹

With these recommendations of the task force, much of the groundwork in formulating Canadian policy objectives for a linkage between trade and labour standards has already been laid.

There has been opposition, however, to including labour standards in the GATT. Professor of Economics Richard Lipsey and Murray Smith, Executive Director of the Centre for Trade Policy and Law, recently announced that they take "the dimmest possible view" of a labour code, with enforcement by trade sanctions, put into the GATT because it will end up

"being used as potent, but concealed protectionist measures in the hands of the Americans and the French".¹⁵

Still, Canadian Minister of Foreign Affairs, André Ouellet, announced that his government is committed to promoting the full range of Canada's interests and values in the conduct of our international affairs, be they human rights, the environment, the economy or trade.¹⁶ Moreover, the Special Joint Committee Reviewing Canada's Foreign Policy recommended that "to enhance Canada's long-term trading position globally....Canada should urge that the WTO give early attention to labour standards, and above all the general question of trade remedies".¹⁷

OECD Work Plan

The OECD work plan, in cooperation with relevant international organizations, will now include "trade, employment and internationally recognized labour standards, including basic concepts, empirical evidence in trade and investment patterns, and current mechanisms for promoting higher labour standards worldwide. This work should lead to a report to Ministers in 1995".¹⁸ The OECD staff, the Business Advisory Committee and John Evans, chair of the OECD Trade Union Advisory Committee, now have the clear mandate to construct and propose a link between trade and labour standards, as well as other interrelated issues such as migration trends and policies.

Specific consideration should be given to determining methodologies for conducting trade and human right impact reviews, the social policy implications of process and production methods, the use of trade measures for social policy purposes, the harmonization upwards of labour standards, economic instruments, subsidies, the internalization into profits/prices of social costs, and transparent and public rule-making and dispute settlement.

Part IV

SOME INSTITUTIONAL AND SUBSTANTIVE "LINKAGE MODELS"

Before setting out the various institutional and substantive proposals for a linkage between human rights, labour standards and trade, it is perhaps best to start with what a social clause does not intend to do: A social clause does not intend to set a global minimum wage for employment, nor does it intend to impede trade.

Following the OECD ministerial meeting in Paris in June 1994, press coverage of the social dimension of trade was clouded with much misinformation, inflaming an otherwise manageable debate. The *Malaysian Business Times*, for example, reported that "bringing the social clause issues to the WTO must be seen as the most mischievous yet in attempts to stifle trade" and that "the G-7 countries decided that there should be a global minimum wage for the developing countries work force."¹⁹ Malaysia's business community subsequently took strong objection to the introduction of a social clause in the WTO.

4.1 Institutional and

Procedural Elements

For the ILO, the social clause at least aims to eliminate the most flagrant abuses and forms of exploitation. Moreover, the linkage between lowering barriers and trade with certain labour and social protection standards is advocated only "to the extent that the latter affects production costs".²⁰

Frankly, it does not appear that the ILO is interested in having exclusive jurisdiction to enforce the trade aspects of a social clause. The ILO is structurally challenged by two institutional characteristics: The first is the voluntary nature of the agreement to be bound by Conventions. This prevents them from playing a full part in regulating international trade. The second concerns the "state-centred" nature of ILO standards. This refers to the fact that the obligations arising from Conventions apply directly only to states, even though other international actors are playing an increasing role in the global

economy and can determine the success or failure of national social policies. On the other hand, the ILO recognizes that state compliance with trade rules is increasingly compulsory, and that this is having a direct effect on producers.

In considering the ILO's role, the organization's Director General Michel Hansenne states that for the organization to avoid charges of "protectionism", it should not advocate trade restrictions or "a compulsory equalization of social costs". The task of regulating international trade falls to the GATT, even if it currently does not have a specific mandate to deal with the problem of social dumping.

Social Clause Assessment Procedure

The ILO Director General offers a comprehensive solution to the problem of defining the appropriate role for the ILO. A special procedure to assess a social clause, along the lines of the Freedom of Association procedure, could be designed and accepted on the basis of reciprocity. Following a consensus in the Governing Body and then the Conference, such a procedure could result from a Declaration and programme of action. The procedure or programme could entail an assessment of the social progress made possible in member states by the liberalization of international trade.

Special procedures currently exist for complaints concerning a member's compliance with the right to freedom of association and freedom from discrimination. These procedures can be used regardless of whether the particular state has ratified the Convention in question, by virtue of its membership in the ILO. Complaints by governments, employee or employer organizations, can be brought to the committees responsible. If the state concerned does not accept the committees' recommendations, the matter is then taken up by the Governing Body, which can set up a Commission of Inquiry to perform an on-site investigation of the situation.

As discussed above in the context of the OECD, there is a need for broad agreement on specific criteria and indicators of compliance with ILO Conventions within a new ILO/WTO market. What is required might be described as, in the words of economist Jim Stanford, "a system of criteria to measure when cross-national divergence of international standards and their effect on production costs relate to a legitimate comparative advantage or stem from an unfair suppression of workers' rights and labour standards".¹⁴ Nevertheless, differences in the definition and measurement of labour costs,

output, hours of work, and the currency exchange rates make it difficult to compare real labour productivity across countries. Comparisons must instead be considered to be simply representative of a particular country's productivity.

As part of the process to assess labour productivity, an ILO/WTO advisory body could recommend complementary financial and institutional arrangements that would facilitate adjustment for both developed and developing countries. A request could be made to determine the adjustment measures needed in the industrialized countries to encourage the employment of workers who lose their jobs in sectors most vulnerable to the growth of low-cost exports or to foreign service workers.

As well, it might be possible to exert greater pressure on exporting countries to gradually reduce their recourse to child labour in export-processing activities, if they were given assistance to set up school facilities. According to ILO Director General Hansenne, it is appropriate to seek a source of financing from international trade for these complementary adjustment measures.

Complaints Procedure

An ILO/WTO advisory body could systematically review (on the basis of specific complaints) the extent to which WTO members are meeting their obligations under a social clause, and then make recommendations. When a country was found to be falling short of its obligations, the WTO/ILO body would make recommendations which the government would be expected to implement within a specified period. One major element of this would entail providing technical assistance to strengthen the capacity of the government in question to enforce its own labour laws through a strengthened labour inspectorate.

At the end of two years, a further report would be prepared on the effect given to the previous recommendations. The second report would indicate whether the country was fulfilling its obligations, whether progress had been made and further time was needed to deal with the problem, or whether the government had made satisfactory efforts to implement the recommendations. In the case of a government failing to take satisfactory measures to implement the recommendations, and as a last resort, labour-related trade measures could be applied.

Proposed Trade Measures

In an article entitled "Escape from the Global Sweatshop"¹⁰, U.S. Secretary of Labor Robert Reich outlines a vigorous range of issues to be considered in a social clause. He summarizes the bases for defining the U.S. "legitimate national interest" in terms of linking labour standards and world trade: "international action can be justified where the core labour standards that define a civilized economy are violated, or where low labour standards persist despite economic growth, and where the feebleness of democratic institutions gives grounds for belief that living conditions are suppressed by policy, not poverty."

With respect to effective labour-related trade measures, he acknowledged the need for a range of responses to abuses. The range could include "general trade sanctions, sector-specific restrictions, the loss of preferential trade status, ineligibility for international grant and loan programs, "sunshine" (reporting) provisions to highlight abuses, and technical assistance to clear the path to improvement".

In this author's view, a program of providing industry with incentives for complying with rising labour standards might be the most effective in the short-term and the least trade restrictive. Such an incentive could involve product labelling and certification schemes to build upon the grass-roots movement of consumers - both public and private - towards ethical purchasing, and to provide trade and price preferences for "worker friendly" goods and services.

Current Treaty Linkages

Ms. Kortlandt, a representative of the trade union INZET in Amsterdam, suggests that a social clause could be added to the GATT (WTO) by: 1) negotiating a new article to the existing rules, or changing existing Articles 16 (sic)¹¹ or 20 (sic);¹² 2) adding a side-agreement to which countries could voluntarily adhere;¹³ or preferably 3) adding a Part Five to the existing GATT, just as Part Four was added in the 1960s to accommodate the GSP, to develop a multilateral system to harmonize labour standards upwards. Consideration might also be given to a rule that WTO membership is conditional upon ILO membership, just as World Bank membership is conditional upon IMF membership.

An alternative to using WTO dispute settlement procedures and trade measures altogether is to create a linkage between trade and social policy in the so-called Trade Policy Review

Mechanism. This WTO procedure is essentially a form of periodic peer review of selected trade-related topics where members prepare a report on the progress made in achieving GATT obligations. The reviewed party has an opportunity to respond. Both the report and the response are published as a GATT document.

Even the NAFTA Labour Agreement model - where the emphasis is on the domestic enforcement of labour law - might hold promise if: 1) substantively, there were better ILO mechanisms to ensure the domestic implementation of ILO conventions by ILO member states; and 2) procedurally, the serious due process concerns raised about the NAFTA Labour Agreement were addressed. There are no doubt other models.

The important point is that there are proposals on the table to be discussed. Each of the suggested models for actual links between the ILO and the WTO raises complex and sensitive organizational considerations.

4.2 The Substance: Which Rights? Which Standards?

According to ILO Director General Hansenne, two fundamental situations could be assessed in a special "social clause procedure". The first is institutional in nature and concerns a sufficient degree of freedom of association. The second situation concerns the adoption of certain minimum social provisions, in proportion to local costs. Only the most "easily identifiable kinds of social dumping abuse could be assessed."¹⁴

Export Processing Zones

Hansenne gave as an example of social dumping the case of export workers in zones that do not benefit from social legislation as favourable as that which applies to the bulk of the country's work force. The U.S. Department of Labor also confirms that a number of governments do have legal restrictions on unions, collective bargaining and the right to strike in Export Processing Zones (EPZs).¹⁵ For example, South Korea re-imposed restrictions on strikes by ruling that EPZs are "public interest companies".¹⁶



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Suspension of minimum wage laws in EPZs are not infrequent, as for example in India. In Mexico the main instrument for suppressing wages is the "Pact for Stability and Economic Growth", which serves, according to Business Week, "to smother inflation and preserve Mexico's huge labour cost gap with U.S. and other producers".¹⁴⁹ Workers in so-called pioneer industries in Malaysia may not bargain for more favourable specified terms of employment greater than those provided in the general Employment Act of 1955. The right of workers in EPZs that is infringed, in this author's view, is the fundamental right to freedom from discrimination in employment.

The ILO specifies that among the many ILO conventions, one can identify the human rights conventions. In other words, the nature of these conventions is a reflection of internationally recognized human rights. Included among the human rights conventions are:

- Freedom of Association and Protection of the Right to Organize Convention, no. 87, 1948. Ratifications by 1993 totalled 108 out of 168 member states;
- Right to Organize and Collective Bargaining Convention, no. 98, 1949, 121 ratifications;
- Forced Labour Convention, no. 29, 1930, 134 ratifications, and Abolition of Forced Labour Convention no. 105, 1957, 112 ratifications;
- Discrimination (Employment and Occupation) Convention, no. 111, 1958, 117 ratifications;
- Minimum Age Convention, no. 138, 1973, 45 ratifications;
- Equal Remuneration Convention, no. 100, 1951, 119 ratifications.¹⁵⁰

These human rights seem to generate a consensus among proponents of a social clause, as the core of the basic workers' rights, which should be linked to membership at the WTO.

The ICFTU recommended in December 1993 that the following clause should be included in the GATT and in similar international agreements: "The contracting parties agree to take steps to ensure that the observance of the minimum standards specified by an advisory committee to be established by the GATT and the ILO, and including those on

freedom of association and the right to collectively bargain, on the minimum age for employment, discrimination, equal remuneration and forced labour".

Takashi Izumi, General-secretary of the Asia Pacific branch of the ICFTU says that, at the very least: "What needs to be agreed upon globally is that discrimination, forced labour, especially by children, and trade union restrictions are unacceptable in an increasingly global market".¹⁵¹

In a somewhat expanded list, the Canadian Labour Congress (CLC) states that workers' rights clauses require trading partners to: respect freedom of association and free collective bargaining (ILO Conventions 87 and 98), prohibit forced labour (Conventions 29 and 105) and child labour (Conventions 5 and 138), eliminate discrimination in employment (Convention 111) and provide for equal remuneration (Convention 100) and basic health and safety protection (Framework Convention 155).¹⁵² According to the CLC: "These conventions are well recognized and apply equally to both rich and poor countries. Such an approach is even-handed as it introduces universal rules applied on a universal basis".¹⁵³

4.3 Customary International Law and Workers' Rights

Phillip Alston disputes the claim made by the U.S. General System of Preferences that there are really "internationally recognized" workers' rights and labour standards, in terms of specific treaty obligations. He states that: "The Hours of Work Convention No. 1 only received 49 ratifications as of January 1991, the relevant minimum age Convention, No. 5, had 69 ratifications, and the Convention on minimum wage fixing machinery No. 131 had only 34 ratifications. As of January 1991, among the most commonly cited ILO human rights conventions (No. 11, Freedom of Association in Agriculture, 98, 105, 111, and 138); Thailand had ratified only one (No. 105); Indonesia, one (No. 98); Myanmar (Burma), one (No. 11); Chile, two (Nos. 11 and 111); and South Korea, none." (Alston incorrectly states that The Republic of Korea (South Korea) had not joined the ILO. In fact, it did so in 1991).¹⁵⁴

Alston adopts a rather narrow view of the extent to which it can be said that a basket of workers' rights and standards has reached the status of customary international law. For

example, he points out that the U.S. has failed to ratify most ILO conventions, providing further evidence to him that these rights and standards are not internationally recognized by treaty obligation or customary law.

With respect, he does not appreciate the distinction the International Court of Justice makes between on the one hand, sources of international law by virtue of recognized treaties and conventions, and, on the other hand, international custom as evidence of a general practice by states accepted as law.¹⁵⁵ Internationally recognized workers' rights and labour standards can be said to be binding on the U.S., as evidenced by its state practice of imposing GSP and Foreign Aid conditionality with them upon others.¹⁵⁶

Furthermore, the major workers' rights and labour standards are specified in the International Covenant on Economic, Social and Cultural Rights, which has been ratified or acceded to by 104 nations as of December 1991. While it is true that the U.S. remains the only major industrialized democracy that has not ratified this agreement,¹⁵⁷ nothing precludes treaty rules from becoming customary international law and thus binding upon non-parties.¹⁵⁸

Finally, the U.S. and all of the other countries Alston listed above, by virtue of membership in the ILO, at the very least, have undertaken to respect the fundamental rights of freedom of association and non-discrimination, outlined as a direct source of law in the ILO Constitution.¹⁵⁹

CONCLUSION

When the Uruguay Round of Multilateral Trade Negotiations was concluded, the Ministers stressed the importance of the WTO Preparatory Committee's examination of "the relationship between the trading system and internationally recognized labour standards". Establishing a Committee on Labour Standards must be a priority on the WTO agenda. The WTO must have the mandate and resources necessary to develop a comprehensive work plan to identify the issues raised by a linkage between trade and labour standards and options for further cross-institutional discussion and functions. It is fundamental that the process be open, public and transparent.

One of the first activities the Committee, and indeed Canadians, ought to undertake is a comprehensive human and worker rights and labour standard ("social policy") impact assessment of each of the new 28 WTO Agreements. The Committee might make recommendations on means of immediately eliminating the negative social policy effects of particular Agreements and mitigating those where elimination is not feasible. These concerns, along with many more in the details of the total 26,000-page trade agreement, need to be discovered, debated and amended where possible. It is not enough to simply ask the trade community to adopt a "social clause" and trust that it will be implemented appropriately.

The OECD work program, in cooperation with relevant international organizations, includes a clear mandate to propose and construct a link between trade and labour standards, as well as other interrelated issues, such as migration trends and policies. There is a critical need for more precise criteria and indicators of sustainable development. This data is necessary to inform the work of the proposed ILO/WTO Advisory Committee to assess whether or not social progress keeps pace with the economic progress that trade facilitates.

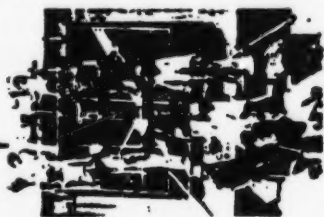
There is a need for broad agreement on specific criteria and indicators of compliance with ILO Conventions to guide this aspect of a new ILO/WTO mandate. In the words of economist Jim Stanford "a system of criteria to measure when cross-national divergence of international standards and their effect on production costs relate to a legitimate comparative advantage or stem from an unfair suppression of workers'".

rights and labour standards".¹⁰⁰ Nevertheless, it is notoriously difficult to compare real labour productivity across countries, due to differences in the definition and measurement of labour costs, output, hours of work, and the currency exchange rates. Comparisons must often be seen as simply representative of the country's productivity.

A program to provide an incentive for industry to comply with rising labour standards might be the most effective in the short-term. Such an incentive could involve product labelling schemes to build upon the grass-roots movement of consumers — both public and private — towards ethical purchasing, and to provide trade and price preferences for "worker-friendly" goods and services. It is critical that these initiatives be promoted as an incentive or preference scheme that supports social progress rather than a system of trade sanctions or penalties for non-compliance. Indeed, each of the suggested linkages outlined in this report between the ILO and the WTO raises complex and sensitive design considerations.

Ultimately, the protection of workers' rights and labour standards will be well-served by the gradual elimination of barriers to international labour mobility. Current theoretical and empirical research suggests that a world economy in which labour as well as capital is mobile will tend to be characterized by generally higher wages and labour standards than one in which only capital is mobile.¹⁰¹ Research also suggests that labour will tend to leave regions where standards are low. If the governments in those areas wish to increase foreign investment and production, they will be obliged to maintain social policy legislation and institutions to attract a skilled and motivated work force.

While some debate the logic of a social clause, others, less belatedly, are fighting for survival.



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¹ Gijbert van Liemt, "Economic Globalization: Labour Options and Business Strategies in High Labour Cost Countries", *International Labour Review*, Vol. 131, 1992, No. 4, p. 453.

² The GATT, *Open for Signature* (Oct. 30, 1994), UNIS 187/888.

³ UNCED, *Rio Declaration on Environment and Development*, Principle 1, UN Doc. A/CONF.151/5/Rev. 1, 1992.

⁴ Mahbub ul Haq, *New Imperatives of Human Security: Society for International Development*, Mexico, 1994.

⁵ John Mainwaring, *International Fair Labour Standards: Some Issues*, Labour Canada, Ottawa, 1979, p. 21-22.

⁶ Cited by Steve Charnovitz, "Fair Labor Standards in International Trade", *Journal of World Trade Law*, Jan. 1986, p. 78.

⁷ GATT Prep. Com. (86) W/43 at 1 (June 24, 1986), *Workers rights* and see GATT Doc. C/M/212: August 6, 1987, cited by J. Perez-Lopez, *Conditioning Trade on Foreign Labour Law: The US Approach*, *Comparative Labour Law Journal*, Winter 1988, p. 280.

⁸ Prep. Com. (86) SR 18 (Aug. 13, 1986) at 13 (Record of Discussions), and see Overseas Development Institute, *Briefing Paper*, April 1989, London. For further history, see Christine Elwell, *Legal Base For Social Policy in the Canada U.S. FTA: EEC and GATT Initiatives Transformed?*, LSE LLM Thesis, 1991.

⁹ See for example Section 599 of the *Foreign Operations Act, Fiscal Year 1993*. U.S. foreign aid funds are prohibited for assistance and projects which would contribute to violations of internationally recognized worker rights or for export processing zones, cited by Labour Sector Development and Workers Rights in Canadian Development Assistance, CAW, CUPE, CEP and the Steelworkers Humanity Fund, submitted in the Canadian Foreign Policy Review, May 1994, p. 14.

¹⁰ GSP, 1994, 19 USC 2462 and 2464.

¹¹ Trade Act of 1988, s. 301, 19 USC 2411 and 2417.

¹² Lance Compa, "New Strategies For Worker Rights In the Global Economy", July 1992 draft, Washington Baltimore Newspaper Guild, Washington, D.C. at p. 23.

¹³ Inside U.S. Trade, Vol. 11, No. 51, Dec. 24, 1993, p. 1.

¹⁴ Richard Rothstein, *The Global Hiring Hall: Why We Need Worldwide Labor Standards*, American Prospect, Spring 1994, p. 55.

¹⁵ Gijbert van Liemt, *Condition or Co-optation? Trade, Aid and Minimum Labour Standards*, paper presented at Amsterdam Free University, 1994, p. 12.

¹⁶ "Lessons From America", *The Economist*, January 29, 1994, p. 48.

¹⁷ Spain and Portugal were admitted in 1986, Greece was admitted in 1981.

¹⁶ See B. Hepple, "European Labour Law" in *Labour Law and Industrial Relations*, Vol. 2 (1990), Kluwer Publishers, pp. 317-318.

¹⁷ Lord Wedderburn, "The Social Charter in Britain: Labour Law and Labour Courts?", (1991) *Modern Law Review* Vol. 54, No. 1, p. 8.

¹⁸ For a complete review, see Gabriel Guery, *European Collective Bargaining and the Maastricht Treaty*, International Labour Review, Vol. 131, 1992, No. 6, 581.

¹⁹ See Brian Bercusson, "Maastricht: A Fundamental Change in European Labour Law", *Industrial Relations Journal*, 23(3) 1992.

²⁰ In the U.S. there has been little reduction in actual hours of work in industry since 1960; and the long hours of work in Japan, despite remarkable economic progress, have not declined since 1975. See Joseph Thurman, "The Hours We Work: Changes and Controversies", *ILO Conditions of Work Digest* Vol. 9, 2/1990.

²¹ See the criticisms of the former Social Charter by Hugo Mosley, "The Social Dimension of European Integration", *International Labour Review*, 129, 2.

²² "The Week in Europe", *The European Commission Newsletter*, WE/32/1994, September 29, 1994, p. 1. Two other controversial proposed Directives — on Parental Leave and on the Burden of Proof (sex discrimination) — will now be discussed by the social partners.

²³ For a scathing review of the Social Chapter, see Benn Stiel, "Social Correctness Is The New Protectionism", *Foreign Affairs*, Vol. 73, No. 1, p. 14.

²⁴ R. Rothstein, *The Global Hiring Hall*, note 14 *supra*, at p. 61.

²⁵ See Ian Robinson, *Economic Integration: As If Democracy Mattered*, Canadian Centre for Policy Alternatives, Ottawa, 1993, note 15 *supra*, at p. 9.

²⁶ G. van Liemt, note 15 *supra*, at p. 10.

²⁷ Bruce Campbell, "Trade and Investment Policy Under NAFTA: As If Jobs Mattered", *Canadian Foreign Policy Review*, Spring 1994, Vol. 11, No. 1, p. 147 at 158.

²⁸ Comparison of Mexican and U.S. Occupational Safety and Health Legislation, Regulation and Enforcement Structure, AFL-CIO, Washington DC, 1993, p. 5.

²⁹ See "The NAFTA Side Agreements: Labour and Women's Issues" in *The NAFTA Papers: Implications for Canada, Mexico and Developing Countries*, Ann Weston, ed., North-South Institute, Ottawa, 1994, p. 89.

³⁰ Despite settlement under the North American Agreement on Environmental Cooperation (NAALC) is based on complaints alleging that the non-enforcement of domestic environmental law is blocking or impeding free trade. The procedure is only triggered where a person alleges damage from a persistent pattern of failure by a NAFTA party to enforce an environmental law related to work places or sectors that produce goods or services traded

between the NAFTA Parties (Article 24, NAALC). There is, at present no dispute procedure available to raise environmental issues where there is no environmental law or, where there is no trade aspect to a continental environmental problem or dispute.

³¹ B. Campbell, "Trade and Investment Policy Under NAFTA: As If Jobs Mattered", note 29 *supra*.

³² See, for example, the World Trade Organization and Canada, Jonathan Aullett and Thomas Asworthy, CIBC Foundation, August, 1994, p. 18.

³³ The U.S. National Administrative Office telephone number is (202)501-6653. The name of the Secretary of Canadian NAO is May Morpaw. Ms. Morpaw may be contacted by mail at 165 Hotel de Ville, Phase 2, Place de Portage, 7th Floor, Hull, Quebec, or by telephone at: (819)994-6231. The federal government is negotiating an agreement with the provinces — the "Canadian Inter-governmental Agreement Regarding the North American Agreement on Labour Cooperation" — to implement the substantive and procedural aspects of the Labour Agreement. According to the Canadian NAO, many provinces are expected to bring forward legislation in the new year.

Traditionally, the federal governments have been engaged in a "Cooperative Work Program", as specified in the Agreement. Canadian experts such as George Adams (now of the Ontario Court), as well as businesses and labour organizations, including the CLC, and the provinces have been engaged in specific conferences. Canada is hosting the activities of the 1995 Work Program. A Canadian will be chosen to fill the position of Executive Director of the NAALC Secretariat. Agreement by the parties on who will fill this position is not expected until early next year because of the change in government officials in Mexico, following its recent election.

³⁴ U.E., *Post-NAFTA Labor Rights Violations in Mexico*, 1994, Pittsburgh, PA.

³⁵ PERSPECTIVES, "NAFTA Comes Into Force with Glimmer of a Social Clause", *International Labour Review*, Vol. 133, No. 1, 1994, p. 113.

³⁶ "Trade vs. Human Rights", *Ottawa Citizen*, April 6, 1994.

³⁷ For a detailed discussion see S. Perez Del Castillo, "MERCOSUR History and Aims", *International Labour Review*, Vol. 132, No. 5, p. 639.

³⁸ The following nine countries were elected for a two-year term: Canada, Brazil, Chile, El Salvador, Guatemala, Jamaica, Mexico, USA, and Venezuela.

³⁹ "Activities of the UN System Within the Framework of the Core Issues", Prep. Com. for the World Summit for Social Development, New York, Working Paper No. 2, Feb. 1994, p. 3.

⁴⁰ *Why the New WTO Should Not Deal with Labour Standards*, ILO World Network, June 1994.

⁴¹ See Note 39 *supra*.

⁴² *Ibid*.

⁴³ *Ibid*.

⁴⁴ Earl Drake, Professor and former Canadian Ambassador to China, Reviewing Canadian Foreign Policy, April 28, 1994, 6:20.

⁴⁵ National Advisory Council for Development Cooperation, Recommendations on Minimum International Labour Standards, The Netherlands, Ministry of Foreign Affairs, 1984, p.1.

⁴⁶ FT, July 21, 1994, p.3.

⁴⁷ R. Rothstein, The Global Hiring Hall, note 14 *supra* at p.55.

⁴⁸ S. Jokes, The Influence of International Trade Expansion of Women's Work, Bridge Paper, IDS, Brighton *ibid*, p. 23.

⁴⁹ See Chris Gabriel and Laura MacDonald, Women Organizing Around NAFTA: Prospects for a Feminist Internationality, Sept. 1993.

⁵⁰ Women Workers in a Changing Global Environment, International Institute for Labour Studies, 1994, p.3.

⁵¹ Reconstructing World Politics: The Emergence of Global Civil Society, of the Board of Studies in Politics, University of California, Santa Cruz, paper presented at the International Studies Association, Atlanta, Georgia, 1992.

⁵² Rothstein, Note 14 *supra* at p.55.

⁵³ The Report of the US Department of Labor, which supplements the Country Reports on Human Rights Practices in compliance with the Trade Act of 1988, Section 6306, must identify, to the extent possible, producers operating outside the US, including US corporations, who do not provide conditions of employment consistent with internationally recognized labour standards. Where a country intentionally or "through wilful negligence" allows a producer to operate in violation of them, the producer and the products produced for international trade shall be reported to Congress.

⁵⁴ Article 19(8), see generally Virginia Leary, International Labour Conventions and National Law, Martinus Nijhoff Publishers, 1982, p.10.

⁵⁵ Supported by Jagdish Bhagwati, "American Rules, Mexican Jobs", *op. ed.* New York Times, March 25, 1993, p.A11, cited by Ian Robinson, Note 27 *supra*.

⁵⁶ See recent study by Richard Freeman and Morris Kleiner, Do Unions Make Enterprises Unprofitable?, National Bureau of Economic Research, Working Paper 4797, 1994.

⁵⁷ The trade community already recognizes that products of prison labour constitute grounds for suspending the GATT obligations of national treatment and most favoured nation status, GATT Article XX (e).

⁴¹ See generally John Jackson and W. Davey, Legal Problems of International Economic Relations: Cases, Materials and Text West Publishing, Minnesota, 2nd ed., p.17.19.

⁴² See for example Terry Collingworth, J. William Gould, and Phyllis J. Harvey, from the International Labour Rights Education and Research Fund, "Time For A New Global Deal", *Foreign Affairs*, Jan-Feb 1994, p.12.

⁴³ Steve Charnowitz, "Fair Labor Standards in International Trade", *Journal of World Trade Law*, January 1986, p.65.

⁴⁴ Steve Charnowitz, Fair Labor Standards in International Trade, *Journal of World Trade Law*, January 1986, p.65.

⁴⁵ Quoted by John Cavanagh et al., Trade's Hidden Costs: Worker Rights in a Changing World, Washington: International Labour Rights Education and Research Fund, 1988, p.28.

⁴⁶ Report of the Independent Commission on International Development Issues Under the Chairmanship of Willy Brandt, North-South: A Program for Survival 288 (1980).

⁴⁷ Andrew Jackson, A Social Charter and The NAFTA: A Labour Perspective, Special Topics, Industrial Relations Centre, Queen's University, 1991, p.78.

⁴⁸ Reviewing Canadian Foreign Policy, Testimony given June 21, 1994, 46:19.

⁴⁹ Los Angeles Times, July 4, 1994.

⁵⁰ Survey by International Centre for Human Rights and Democratic Development.

⁵¹ Social Dumping Under North American Free Trade, by Ian Stanford, Christine Elwell and Scott Sinclair, Canadian Centre for Policy Alternatives, Ottawa, 1993, for a detailed discussion prior to the WTO Final Act.

⁵² *Ibid.* and see Special Import Measures Act R.S.C., Ch. S 15 (1985), Section 23 for implementing Canadian legislation.

⁵³ The Social Clause: Rationale and Operating Mechanisms, by the International Confederation of Free Trade Unions (ICFTU), December 3, 1993.

⁵⁴ James Stanford, "North American Economic Integration and the International Regulation of Labour Standards", in Bruno Stern (ed.) Proceedings of New York University 46th Annual National Conference on Labor, Boston: Little Brown 1993.

⁵⁵ Rothstein, Note 14 *supra* at p.59.

⁵⁶ "Worker Rights and International Trade: A Case for Intervention", Review of Radical Political Economics, 1988, Vol. 20, p.23, and see his work at International Affairs, U.S. Department of Labor.

⁵⁷ G. Liemt, Note 15 *supra* at pp. 60-64.

⁵⁸ According to a US Department of Labor report, the number of minors illegally employed in American sweatshops increased by 128 per cent in the second half of the 1980's. As many as 10 million Mexican adults are seriously underemployed, equal to the

number of children working. See detailed treatment in Tom O'Brien, *International Trade: The Need For Labor and Environmental Standards*, Hope College Lecture, 1994.

⁹⁸ For example the Werkstatt Ökonomie, Heideberg.

⁹⁹ Survey by International Centre for Human Rights and Democratic Development.

¹⁰⁰ "The Child Labour Dilemma", reported by Stephen Dale, *Toronto Star*, April 22, 1994.

¹⁰¹ For example Samuel Porteous, *Populism, Unemployment and Foreign Policy*, *Canadian Foreign Policy Review*, Spring 1994, Vol. 11, No. 2, p. 137 at 144.

¹⁰² Collingworth, et al, Note 61 *supra* at p. 12.

¹⁰³ "The Influence of International Labour Standards on the World Trading Regime", *International Labour Review*, Vol. 126, No. 5, September/October, 1987, 565 at 581.

¹⁰⁴ David Held, *Democracy and Globalization*, *Alternatives* 16 (1991) 201-208.

¹⁰⁵ C. Dias and D. Gillies, *Human Rights, Democracy and Development*, International Centre for Human Rights and Democratic Development, Montreal, 1993, p. 1.

¹⁰⁶ Edward Broadbent, President, International Centre for Human Rights and Democratic Development, *Reviewing Canadian Foreign Policy*, April 28, 1994.

¹⁰⁷ See also the concerns raised by the Asia Pacific Women's Action Network at the Jakarta Ministerial Meeting, June 1-14, 1994, with specific reference to migrant workers and labour rights.

¹⁰⁸ ICFIU, *Free Labour News*, July 1993, p. 2.

¹⁰⁹ On the Use and Misuse of Comparative Law, (1974) *Modern Law Review* 1, p. 21.

¹¹⁰ ICFIU, *Free Labour World Newsletter*, July 1994, p. 6.

¹¹¹ Interview with Rick Jackson, International Affairs, Canadian Labour Congress.

¹¹² *Reuter Textline, Business Times*, Malaysia, June 8, 1994.

¹¹³ Porteous, Note 81 *supra* at p. 142.

¹¹⁴ *Free Labour World, ICFIU Newsletter*, No. 3, March, 1994 p. 1.

¹¹⁵ ICFIU, *Free Labour News*, July 1994, p. 7.

¹¹⁶ UN Development Programme, *Human Development Report*, (New York: Oxford University Press) 1992, quoted by David Gillies, *Human Rights and Democratic Governance: A Framework For Analysis and Future Action*, The International Centre for Human Rights and Democratic Development, Montreal, 1993, at p. 6.

¹¹⁷ National Advisory Council, Note 47 *supra* at p. 44.

¹¹⁸ Report of the Experts Group, Sweden, Oct. 1993, p. 9.

¹¹⁹ Zehra Arat, *Democracy and Human Rights in Developing Countries* (Boulder and London: Lynne Rienner Publishers, 1991) cited by Dias and Gillies, Note 85 *supra* at p. 2.

¹⁰⁰ See Edward Muller, "Democracy, Economic Development and Income Inequality", *American Sociological Review*, 53, 1988, p. 50, cited by Ian Robinson, *The NAFTA, Democracy and Economic Development*, Centre for Policy Alternatives, Ottawa, 1993, *fun* 10.

¹⁰¹ One of the bodies created, the Working Group on WTO Rule-of-Law, is chaired by Pierre Gosselin, a Canadian. A potentially important body related to the General Agreement on Trade in Services is the Working Group on the Movement of Natural Persons, chaired by Ambassador Lilia Bautista of the Philippines.

Another important body is the Sub-Committee on Institutional, Procedural and Legal Matters chaired by Ambassador Kesavapany of Singapore to make appropriate arrangements with respect to WTO relations with other governmental and non-governmental organizations.

¹⁰² GATT Focus Newsletter, No. 105 January/February, 1994, p. 5.

¹⁰³ GATT Focus Newsletter, Geneva, No. 109, July 1994, p. 2.

¹⁰⁴ One of the primary results of gaining recognition as a true international organization (as opposed to a mere contractual organization - GATT's current status) is that its rules and jurisprudence are elevated in the eyes, for example, of the International Court of Justice. Some environmental advocates have suggested that the Court ought to rule whether decisions by the GATT undermine other more "legitimate" international rules, such as those developed in the UN, or directly by state parties (in the absence of a world government) as is the case with most international environmental agreements, such as, the Montreal Protocol on Substances that Deplete the Ozone Layer. See for example James Cameron (Foundation for International Environmental Law and Development, London), "The Use of Trade Provisions in International Environmental Agreements", *Yearbook of International Environmental Law*, Vol. 2 (1991) p. 6. Even if this argument could be adapted in the human rights context (eg. ILO Conventions v. GATT rules), the foundation of its premise is seriously undermined with the creation of the WTO.

¹⁰⁵ Third World Network, *The End of the Uruguay Round and Third World Interests*, Feb. 1994.

¹⁰⁶ See generally C. Dias and D. Gillies, *Human Rights, Democracy and Development*, International Centre for Human Rights and Democratic Development, Montreal, 1993, p. 20.

¹⁰⁷ "The Road from Marrakesh: The Quest for Economic Internationalism in the Age of Antivalence", *Canadian Foreign Policy*, Spring 1994; Vol. 11, No. 1, p. 1 at 6.

¹⁰⁸ *The Reuters European Business Report*, June 6, 1994.

¹⁰⁹ Quoted by James Smith, "NAFTA and Human Rights: A Necessary Linkage", *U.C. Davis Law Review*, Summer 1994, Vol. 27, No. 4, 793 at 803.

¹¹⁰ *The Globe and Mail*, Friday, December 30, 1994.

¹¹¹ The Reuters European Business Report, June 6, 1994.

¹¹² GATT Focus Newsletter, No. 107 May 1994, p. 3-5.

¹¹³ Guy de Jonquieres "GATT Row on Workers' Rights Settled", in *Financial Times*, April 8, 1994, p. 14. See also Robert Shanks, *The New Jerusalem: Globalization, Trade Liberalization, and Some Implications for Canadian Labour Policy*, Staff Policy Paper, No. 94/7, Foreign Affairs and International Trade Canada, Ottawa, p. 26.

¹¹⁴ *Wall Street Journal*, February 10, 1994.

¹¹⁵ See *The Week In Europe*, Commission of the European Communities, WE5/94, Feb. 10, 1994, p. 1.

¹¹⁶ *The Irish Times*, April 16, 1994.

¹¹⁷ *Inside US Trade*, January 28, 1994.

¹¹⁸ GATT Focus Newsletter, No. 107, May 1994, pp. 3-5.

¹¹⁹ *Ibid*.

¹²⁰ *Ibid*.

¹²¹ The only countries that have not as yet signed onto the WTO as of August 15, 1994 are: Bahamas, Dominica, Ecuador, Grenada, Panama, St. Kitts and Nevis, St. Vincent and the USA.

¹²² *Free or Fair Trade*, Vol. 2 No. 8-9, May 1994, p. 5.

¹²³ *Agence France Presse*, April 25, 1994.

¹²⁴ Kieran Cooke, "Mahatir Assails Labour-Trade Link", *Financial Times*, April 6, 1994.

¹²⁵ *Economist Intelligence Unit*, *Business Europe*, April 25, 1994.

¹²⁶ *The Reuters European Business Report*, June 6, 1994.

¹²⁷ Cited by Ablett and I. Awworthy, *supra* fn 34.

¹²⁸ See for example John Dillon, *Intellectual Property Rights In NAFTA: Implications for Health Care and Industrial Policy In Canada*, Ecumenical Coalition for Economic Justice, Toronto, 1993.

¹²⁹ *Japan Economic Newswire*, Kyodo News Service, June 8, 1994.

¹³⁰ Statement by Minister of International Trade, Roy MacLaren, at a meeting by the OECD Council at the ministerial level, June 7, 1994, Paris, Item 3, p. 2.

¹³¹ Testimony, *Reviewing Canadian Foreign Policy*, April 28, 1994, 6-5.

¹³² The CFL, consisting mainly of the building trades, ought not to be confused with the larger Canadian Labour Congress.

¹³³ The impact of unimpeded bilateral government interventions which restrict workers' rights and union effectiveness such as the "Right-To-Work" laws in the Southern United States and "Export Processing Zones" in developing countries on the one hand, and the inability of the poorest countries to attain reasonable labour standards relative to the level of development on the other hand, see *Final Report of the International Trade Advisory Committee (ITAC) Task Force VIII: Labour Practices and International Trade*, Ottawa, 1991, p. 10.

¹³⁴ See note 71 *supra*.

¹³⁵ Canadian Centre for Policy Alternatives, *The Monitor*, Ottawa, October 1994.

¹³⁶ Notes of an Address to the National Capital Chapter of the Canadian Institute for International Affairs, May, 1994.

¹³⁷ *Canada's Foreign Policy: Principles and Priorities for the Future*, Senate and House of Commons Special Committee, November, 1994, p. 34.

¹³⁸ OECD Press Release, Paris, June 8, 1994, SG/Press(94)41.

¹³⁹ *Reuters Textline*, *Business Times*, Malaysia, June 8, 1994.

¹⁴⁰ *Defending Values: Promoting Change: Social Justice in a Global Economy*, Report of the Director General, International Labour Conference, 81st Session, 1994, p. 57.

¹⁴¹ Jim Stanford, *supra* fn. 73, p. 23 and see discussion above on OECD Criteria and Indicators of Sustainable Development.

¹⁴² From "Escape from the Global Sweatshop", article which first appeared in *The Washington Post*, June 13, 1994.

¹⁴³ Article XVI of the GATT concerns Subsidies (that the failure of a government to comply with specified ILO Conventions would be deemed to be an unfair subsidy that could be offset with a countervailing duty, eg the social dumping theory).

¹⁴⁴ Article XX of the GATT outlines the General Exceptions to the otherwise applicable GATT obligations (eg national treatment and most favoured nation, trade principles which generally preclude import bans and tariffs other than those agreed to ("paid for") in the tariff schedules). Presently Article XX(e) allows contracting parties to the GATT to ban products of prison labour.

¹⁴⁵ The Uruguay Round has changed the prior practice of establishing Codes, such as the one Subsidies, that parties could choose to sign. Now the practice is that nothing is agreed until everything is agreed, that is to say the "single undertaking" approach.

¹⁴⁶ ILO, Report of the Director General at the 81st Session, 1994.

¹⁴⁷ *Worker Rights in Export Processing Zones*, Bureau of International Affairs, FLI 90-32, p. 7.

¹⁴⁸ Consider whether regulation at the WTO concerning "State Trading Enterprises" - think of Europe's pledge to deal with concerns about China through this mechanism may be applicable in a graduated social clause, where developing countries might undertake to apply the clause to their state-trading companies, given the direct obligations of states to promote human rights and their direct control over state enterprises, leaving non-state enterprises a happy place in period?

¹⁴⁹ Quoted by Tom O'Brien, *International Trade: The Need for a New & Environmental Standards*, Hope College Lecture, April, 1994.

¹⁵⁰ *International Labour Organization Fact Sheet*, February 1994.

¹⁵¹ *The Globe and Mail*, April 21, 1994.

¹⁵¹ Policy Statement on International Solidarity and the Global Economy, presented at the 20th Constitutional Convention, May 1994, para 18.

¹⁵² Reviewing Canadian Foreign Policy, Testimony given by Rick Jackson of the CLC on June 21, 1994, 46:19.

¹⁵³ P. Alston, "Labor Rights - Provisions in U.S. Trade Law: Aggressive Unilateralism", *Human Rights Quarterly* 15 (1993), 1-9.

¹⁵⁴ Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, T.S. No. 993, Article 38; and, more generally, M. Whiteman, *Digest of International Law* (New York, 1985) pp 6-7.

¹⁵⁵ See above discussion on the U.S. GSP initiative, p.8.

¹⁵⁶ There does appear to be a trend favouring ratification by the U.S. of important international human rights agreements, including the Genocide Convention, the Torture Convention, and the recent ratification of the International Convention on Civil and Political Rights, admittedly with too many reservations and still no commitment by the Clinton administration to submit the Optional Protocol to the Senate.

¹⁵⁷ Article 38 of the Vienna Convention on the Law of Treaties, 1155 UNTS 331 (1980).

¹⁵⁸ See generally Professor N. Valicos, *International Labour Law*, (Kluwer Publishers, 1979); and, specifically, in *International Labour Law*, "Labour Law and Industrial Relations in Industrialized Market Economies", (Kluwer Publishers, 1990) Vol. 2, p. 317-318.

¹⁵⁹ Jim Stanford, *supra* fn. 141, p.23 and see discussion above on OECD Criteria and Indicators of Sustainable Development.

¹⁶⁰ See The Social Implications of a North American Free Trade Agreement, Economic Policy Council of the United Nations Association, Washington D.C., 1993, p. 30-31, cited by Stanford, *North American Economic Integration*, Note 73 *supra* at p.14.